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RAILWAY CONTROL  
BY  
COMMISSIONS

BY  
FRANK HENDRICK  
RICARDO PRIZE FELLOW IN HARVARD UNIVERSITY

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# RAILWAY CONTROL BY COMMISSIONS

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## CHAPTER I

### INTRODUCTION

FEW institutions in the life of civilized nations are of more universal interest than the railways, and there is certainly no branch of governmental or individual service, whether public or quasi-public, which interests so many persons in so many different and conflicting ways. In the present epoch of the history of railroading the attempt is being made to conciliate conflicting interests and to arbitrate them when they cannot be brought together. The direction of this effort has been that of a more thorough recognition of the public character of the railway service, and has been toward an efficient public control. The forms which the relation of the state to the railways has taken in different countries have varied greatly. In some countries the state has ended by owning the roads, in others, ownership has been coupled with operation, not by the government, but by companies. These systems

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are prevalent in Continental Europe, where the government is rather administrative than legislative, where, also, the strong arm of government is accustomed to reach into the province of industrial enterprise. In the United States and England, however, the state has refrained from interfering, to any degree, in the operation of railways, preferring to leave risk, responsibility, and profit to private enterprise. Yet in recent years the relation of state and railways has become closer. It has often taken the shape of a commission, advising, supervising, or controlling railways in the public interest. The commissions have sometimes been temporarily appointed for a special purpose, sometimes permanent, to meet general objects and whatever contingencies may arise. Sometimes the commission has had much power, acting alone or in co-operation with other means of control; at other times it has been vested with no arbitrary power, and has performed its functions with no aid from government, and with little dependence upon it. In the last form of commission Massachusetts was the pioneer, in 1869. It is the purpose of this paper to illustrate the workings of the various methods of control. The conclusion will be reached that where its application is possible the commission system is best; that in some countries it is not possible; that of the various forms of commission, the permanent commission without power is the best, but that under certain conditions the temporary possession of arbitrary power must take the place of the weak weapons of publicity and persuasion; that, finally, the experience of

Massachusetts has been that of the best means of control under the best circumstances.

One could scarcely understand the commission system of the United States from the experience of the several State commissions and the Interstate Commerce Commission. Apart from the fact that many of the ideas which the pioneer state in railway regulation gave to the country were borrowed in turn from England and Continental Europe, a just appreciation of the importance of the circumstances and the surroundings in which the means of regulation operates is impossible without a knowledge of the various solutions of railroad questions under different political conditions. Comparison and contrast of motives and actions is the only effective way of learning. Of inconsistencies of control the history of railway regulation in Europe is full.

It is the plan, then, of this paper to present the experience in railway regulation of the countries of Western Europe: France, Italy, Austria, Belgium, Germany; then to examine the experience of England. In the light of the information thus gained the experience of the United States will be presented. The Massachusetts Commission will be discussed as to its work, merits, and influence, and conclusions will be drawn from the discussion.

Perhaps the advantage of observing European experience in order to understand what are the difficulties which the railway problem presents to our form of government will appear from the examination of a few questions chosen from different

countries. It is said, for example, that the real cause of the defeat of the French in the Franco-Prussian War arose out of the strained relations existing throughout the campaign between the French army officers and the railway staff. A failure to communicate caused all the sidings and main lines in the neighborhood of Metz, and the lines leading to the locomotive sheds, to be blocked up with loaded wagons.<sup>1</sup>

To take an instance from England. In 1881, it was asserted, before a committee of the House of Commons, that American beef and cereals were carried from the seaboard at rates that rendered hopeless all competition by English growers of breadstuffs and English breeders of cattle; that the railway companies were by their rates augmenting the agricultural charges—then so great—imposed by the government.

To come nearer home, the day before Christmas, 1896, a strike was declared by the employes of the West End Street Railway Company, a corporation having exclusive right to use the streets of Boston for street railways. All means of transportation between the city and the outlying districts was removed. Great crowds of buyers were kept at home. Many were left by the sudden withdrawal of the street-car service to make their way home with their purchases as best they could. The public health was endangered, and thousands of dollars were lost

<sup>1</sup> Geo. Findlay, on "English Railways," p. 277. Quoted from *Russian Military Magazine*. "Railway Systems in Europe," by Simon Sterne, in *Sen. Misc. Doc.*, 1886-7, vol. ii., No. 66, p. 14.

by merchants who had made preparation for extensive holiday sales.

It is, on the one hand, to protect the public from culpably poor service, unjust charges, and the consequences of financial mismanagement, that governments have attempted public regulation. On the other hand, the motive has been to make the roads useful not only to the general public, but to the government itself, and the railways have everywhere come to be looked upon as developers of industry. In Europe close relations have existed between the railways and the government, most countries taking the initiative in their construction.<sup>1</sup> France treated her railways as she treated her banks, now granting concessions, now restricting them, now assuming charge, now allowing others to control under close government superintendence. Italy, after experience with private ownership, took the roads over and leased them to private companies. Austria, Sweden, Portugal, Russia, Switzerland, and Spain have adopted a system of state roads running in competition with private roads. Belgium commenced with this system, but the government now owns almost all the roads. She controls them through a department as we do our post-office. In Prussia, Bavaria, Wurtemburg, and most of the other German states, nearly all the railways have been acquired by the government, and are worked as a department of state.<sup>2</sup> England began with

<sup>1</sup> C. F. Adams, *Railways, their Origin and Problems*.

<sup>2</sup> Findlay, 220 *ff.* *La Grande Encyclopédie*, vol. A., p. 1028, art. Chemins de Fer.

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practically unrestrained competition, but the government and the roads have worked toward each other until pretty rigid control has been reached. In the United States the roads were neither regulated nor interfered with until the seventies, when State commissions began to be established. The commission had two forms. In the Western States the power to fix rates was given, and public interference was impulsive and, perhaps, not cautiously directed. In the older communities of the East this sort of interference was not called for. The commission with power "to listen, to investigate, to study, and to report" was the only means of control. Of the advisory commission, that appointed in Massachusetts in 1869 is the pioneer and the type. "The fundamental idea was publicity. The commission was to represent public opinion and to direct it." After 1870 State commissions developed on two lines, the one led to the "commission with power," or regulative commission, the other to the "commission without power," or the advisory commission.<sup>1</sup> The tendency has been to bring the various State commissions into co-operation.<sup>2</sup> In this work the Massachusetts Commission took a leading part. In 1887 an attempt was made to render this co-operation more effective by the passing of an Act of Congress to regulate interstate traffic, providing for the appointment of the Interstate Commerce Commission. The work of these

<sup>1</sup> Clark, *State Railway Commissions*. Pub. American Ec. Association, vi., 27.

<sup>2</sup> Adams, 138-9.

commissions, independently and in co-operation, represents the sum total of American control. In England the companies have developed a system of control and co-operation, through the Railway Clearing-House, which gives steadiness and uniformity to railway service in that country, without removing the benefits of competition. Attempts at such combination have been made in this country, but they have been declared illegal. It is believed that this is to be regretted, that the work of public regulation would be rendered more efficient if the efforts of the railways were enlisted. Upon this question the following pages will throw some light, for much in the experience of European countries bears upon this critical point. They will be taken up in order, beginning with that of France.

## CHAPTER II

### RAILWAY REGULATION IN FRANCE

THE history of French railways reproduces in miniature the vicissitudes and inconsistencies which mark the political history of France in the nineteenth century; it offers extremely interesting illustrations of the perplexities which state interference may cause. In the beginning of railway activity, from 1825 to 1835, French statesmen believed that railways would never play a serious part in the industry of the country.<sup>1</sup> The first grants of roads were made in perpetuity. But in 1832, when the company from St. Etienne to Lyons substituted locomotives for horses, and to her freight cars carriages fitted for passengers, the engineers who supposed that France would always rely upon her excellent highways had a premonition of the revolution that was coming, and obtained the passage of two railway laws. They were dated April 26 and June 19, 1833, and marked the starting-point of the complex mass of French railway legislation. They declared, first, that concessions to railways should be made only by legislative enactment; secondly, the charter should not exceed a period of ninety-nine years; thirdly, the state reserved the

<sup>1</sup> Sterne, 42.

right to manage and superintend the railways, to fix maximum charges, not to be changed or exceeded without express authority from the government; and, fourthly, at the expiration of the grant the government was to become the owner of the lines so granted. Almost at the beginning France passed far-sighted railway laws. In comparing her experience with ours, we should remember that we had no legislation that covered more than the immediate present, and absolutely no preventive legislation. We were not interested in giving out territory in such a way as to prevent too many railways from being built; our only object was to get enough railways. When, in 1870, the fruits of this neglect were being reaped, many districts already had too many roads. To be sure, the laws of 1833 do not specify a restriction of territory or monopoly, but they do put the power of deciding into the hands of the government, and public interest was bound closely with that of the companies. It is also remarkable that these laws have not suffered serious change, and remain the basis of the relation between France and its railways to-day.<sup>1</sup>

Already in 1833 the railway laws spoke in no uncertain tone, but it remained for circumstances to shape the practice and give the law its spirit. October 28, 1837, a special commission was appointed to report whether it was better for the government to undertake the construction and operation of railways, or to leave it to private initiative. The

<sup>1</sup> Edmond Théry, *Histoire des Grandes Compagnies*, pp. 1-2. Paris, 1895.

commission did not commit itself. The members favored a division of the territory between individuals and the state, they favored the right of purchase by the state, but concluded against operation by the state. The question of state ownership and management has always been agitated in France as a general issue. It has never been answered as such, but the agitation has been responded to as circumstances and political expediency permitted. In 1838, for example, when the Ministry proposed the construction of lines from Paris to Rouen, from Rouen to Dieppe, from Paris to Orleans, and from Lille to Dunkerque, by the government, the Chamber voted to leave the work to private enterprise.

It happened, however, that, owing to the crisis of 1839, private enterprise was not in a condition to construct five hundred miles of railway on its own credit. Ideas were prevailing at that time which strengthened the unwillingness of private enterprise. First, considering the condition of industry, commerce, and public finance, the construction of a railway was a gigantic undertaking; secondly, the idea of combining national capital and credit with private capital and credit in such a way as to strengthen both is so deeply rooted in the French conception of public finance as to amount almost to patriotism. A new phase was added to the relation between state and railways. Grants were modified to suit the companies, and the Orleans Company, the first to apply for the government's credit, was given the nation's guarantee of an interest of 3 per cent. and a sinking-fund increase of 1 per cent. during the first

forty-six years of its enterprise. This new policy has had most important results, not the least of which is to complicate the arithmetic of the French budget.

Another special commission was appointed in 1840 to report a fixed plan for the construction, operation, and regulation of railways. This commission was as non-committal as its predecessor upon the point of government ownership. They favored a mixed system for the present. "No one," they said, "can give permanence to any rule. Circumstances must decide." On the question of guarantees the commission was emphatic; they answered it in the affirmative once and for all. The arguments they used are interesting as illustrating not only the French railway policy, but the nation's financial policy in relation to all branches, from the Bank of France to the Post-Office Savings Banks. This, they said, was the best way to encourage the investment of small amounts, and to develop the spirit of association for national undertakings, grouping them about enterprises destined to increase the industrial resources of the country. This guarantee, moreover, would remedy the abuses which had driven the investors of small savings from railway enterprises, protecting railway bonds from the sudden changes in value which had made the fortunes of speculators. This policy in France is sound and statesmanlike. Thanks to it, the railways have been pushed to completion much faster than private or government capital working alone would have done, and, thanks to it, the credit of the state

has always been strengthened by its ability to appeal in the hour of need to the patriotism and thrift of the peasants and the *gens du peuple*.<sup>1</sup>

Another patch was added to the complex fabric of French railways by the law of 1842. It provided, in the first place, for the construction of a system of main lines radiating from Paris to the Belgian, the German, the Swiss, and the Spanish frontiers, to England, to the Mediterranean, a plan of construction which underlies the present main network and laid the foundation of the admirably organized system of France. In the second place, the law provided for the management and construction of the roads. It was another compromise. The government was to furnish the lands, the road-beds, and the stations; to the companies it was left to furnish the superstructure and the rolling stock, and to operate the road. In order not to irritate the Chambers, which were openly hostile to state operation, the roadway was to be turned over as soon as finished to those companies which should agree to return the lines to the state in the shortest period of time. The length of the lease—the average length being about thirty-six years—determined the period for which the maximum tariff could be collected. At the expiration of the lease the roads were to become public property, and the state was to buy out the buildings and the rolling stock.

In this project were involved 2500 kilometres, 375,000,000 francs for which coming from the state, 315,000,000 francs from private sources, two thirds

<sup>1</sup> See Théry, 14-16.

of the necessary land being the free gift of the communes.<sup>1</sup> But in 1848 a new complication was introduced, and the state was obliged to adopt a new policy. The work on the new lines had been pushed rapidly, but the financial crisis of 1848 put a stop to the construction of four lines. The line from Paris to Lyons the state found it advisable to purchase.<sup>2</sup> The situation in 1851 was this: There had been granted in all 3910 kilometres. Of these 3546 were in operation, 583 kilometres being operated by the government, the rest being divided among twenty-seven different companies.<sup>3</sup>

In 1851 Louis Napoleon became Emperor Napoleon III. From this time dated efforts to give to this complicated system of lines that simplicity and symmetry which characterize their organization to-day. The first and most important measure of the Emperor looked in this direction. Its object was to conciliate the money power. He grouped all the roads into six territorial divisions, each under the control of a company; he extended the date of re-acquisition by the state from the short time originally agreed upon to a period of ninety-nine years. The companies thus provided for and the dates of expiration were as follows:

COMPAGNIE.	EXPIRATION OF LEASE.
du Nord.....	1950
d'Orleans.....	1956

<sup>1</sup> Théry, p. 17. J. S. Jeans, *Railway Problems*, 77.

<sup>2</sup> Simon Sterne, "Railway Systems in Europe," *Sen. Misc. Doc.*, 1886-7, vol. ii., No. 66, p. 21.

<sup>3</sup> *La Grande Encyclopédie*, x., 1026, 1527.

COMPAGNIE.	EXPIRATION OF LEASE.
de l'Est .....	1954
de l'Ouest .....	1956
du Midi.....	1960
Paris, Lyon, et Méditerranée.....	1959

One thousand kilometres remained in the hands of eight minor companies.<sup>1</sup>

The next step toward uniformity came with the extension of the railways into poorly paying territory. This is interesting as an attempt to solve one of the knottiest of railway problems. The method was as follows: Railways were divided into two classes. The first consisted of roads constructed previous to 1857; they were called the *ancien reseau*. The second class was to consist of roads projected later; they were to be called the *nouveau reseau*. The two classes were to be treated differently. The act which regulated this was called the "Conventions of 1859." It provided for the construction of 18,500 kilometres of new lines. For a period of fifty years, dating from 1865, a guarantee of interest of  $4\frac{65}{100}$  per cent. was to be made to the companies undertaking the new roads. This was 1 per cent. more than the same companies were guaranteed on the older roads. These advances were to be repaid with interest at 4 per cent. as soon as the profits of the new network should exceed the guarantee. Further, all profit in excess of 8 per cent. on the old network was to be carried to the new and less productive roads. The plan was to make the old

<sup>1</sup> Sterne, 211. Théry, 29-46. *Encyclopédie*, 1527.

roads support the new, to make those who were enjoying the monopoly of the old roads assume the burdens of the new. The stock of the old roads became obligations for the new.<sup>1</sup>

This arrangement was less advantageous to the six great companies than the former one. Yet they had been granted a virtual monopoly on the old roads, and they showed their power. They showed, moreover, and very clearly, the disadvantages of government aid, interference, and responsibility. The first is a failure of the roads to respond to the needs of trade and their inertia in the matter of opening up new territory. In 1863 immense territory in the west, southwest, and central regions of France was utterly disregarded by the companies. All the lines which had been constructed in France were through lines. Local needs were so neglected that a special law was passed in 1865 providing for a system of local lines. The proposal for these lines did not, by any means, come from the companies; the lead had to be taken by the communes and chambers of commerce in the cities. Nor did the roads second the urgent appeal for local accommodations. They asserted that they were unable to furnish them. As a matter of fact, the old lines planned in 1842 were now paying a dividend upon stock, as well as interest upon bonded indebtedness. Yet, since they could not make a profit at once upon the new network, the government was obliged to aid the construction by a guarantee of interest and a sinking-fund guarantee of about  $\frac{2}{3}$  per cent.

<sup>1</sup> See Théry, 50-9.

The same arrangement was made for repayment as in the case of the *nouveau réseau*. When a certain rate should be earned on the old lines (this was set at from 19,500 francs to 380,000 francs per mile on different railways) the surplus should be devoted to the payment of interest on the new lines. Thus we find the state, owing to its interference with free initiative, obliged to undertake all ways of communication which cannot be made of themselves to pay a profit.

"This is a disadvantage," some say, "but it is more than balanced by the fact that the government, having control of construction, will see to it that no unnecessary lines are constructed." This argument we should expect to hold particularly in so highly centralized a country as France. But in France the very opposite was true, and this is the second disadvantage of the interference of the government. The local feeders to the main lines could not, in the nature of things, do more than meet very limited needs. Yet through local pride and other causes they were constructed at nearly as great expense as the main lines, and through political intrigue and a desire for speculation they were turned from their natural and primary purpose and brought into competition with the main lines. The immediate result of this was very disastrous to the national budget, and not at all elevating to the tone of national politics<sup>1</sup>; the final result was the forced assumption of these lines by the state.<sup>2</sup>

The third disadvantage was that the state was

<sup>1</sup> Théry, 60.

<sup>2</sup> *Encyclopédie*, 1027.

obliged to aid the roads which were paying profits to private enterprise, and to run at a loss or without profit all poorer roads. Two systems of state railway had come into existence since 1865, the one the unprofitable secondary lines, the other the local lines just mentioned.

“ Those left to the state were detached systems connected with the main lines at remote points. The state was under a constant disadvantage in the operation of these roads, as the main lines subjected the state lines to many indirect disadvantages in rates and facilities. Thus from time to time the companies forced concessions from the state, and exacted the leasing of the more productive feeders to the companies operating the main lines of rail.”<sup>1</sup>

The War of 1870, which marked a new era in French railway construction, shows in an extreme form the great disadvantage of government interference and responsibility. The companies seized a national crisis, not as an opportunity to perform a patriotic duty, but as a rare chance to prey upon the public. The railways responded miserably to the needs of the campaign in the transport of troops. The speculators, who were endeavoring to enlist the populace in the scheme of building the local lines up into main lines to compete with the systems radiating from Paris, seized upon this as fuel for the popular rage against the “ great monopolies.”<sup>2</sup> Speculation in the local lines provided for by the Act of 1865 became a mania. It has passed into

<sup>1</sup> Sterne, 23.

<sup>2</sup> Théry, 64.

history in connection with the name of its daring leader, the Dutch plunger Phillipart.<sup>1</sup> To save themselves from ruin, the great capitalists who were interested in the main lines formed a powerful combination. The most prominent members were the Rothschilds, who are the owners of the majority of the stock in the French railways. The combination succeeded in bringing Phillipart to ruin, and put an end to the mania, not from a sense of duty, not because they wanted the local lines—they were worthless. The stockholders threw themselves upon the state, and, naturally, the state had to bear the burden. Thus the great companies pursued their own interest and the weak burdened the state; whichever way the government turned embarrassment was heaped upon the budget.

People began to think it was time for the state to have some say in the enterprise which was costing her so much. After the cession of the roads of Alsace-Lorraine in 1872, a commission was appointed to report upon the matter. It recommended that all the roads be placed under direct orders of the Minister of War. The purpose of this was to ensure an efficient transport service in time of war. A further step was taken by the Act of 1877. It prescribed a military organization of the railways, and that the railway servants should be trained theoretically and practically for the war service. This plan has been followed out.<sup>2</sup>

This law started an agitation in favor of state ownership.<sup>3</sup> No less prominent an orator than

<sup>1</sup> Adams, 106.

<sup>2</sup> Théry, 65.

<sup>3</sup> Sterne, 23.

Gambetta talked of "clipping the wings of the magnates." The Ministry, which has generally been in favor of state ownership, provided in 1879, by a ministerial decree, that in the years from 1879 to 1888 no less than 10,000 miles of lines should be constructed and equipped by the state, to cost, it was estimated, 4,000,000,000 francs. But the great companies had become too strong. Down to 1881 the credit of the French Government was better than that of the railways. The crisis in the winter of that year forced the government to admit that its resources for taxation were not adequate to the execution of the project of 1878. The great companies took advantage of the weakness of the government, and forced it to surrender the lines constructed since 1879. Upon these lines a considerable part of the total estimated cost had been expended. They were now to be operated by the great companies during the period of their other leases, and substantially without repayment of the expenditure for original construction. Thus again the government was balked in an attempt to compete with the great companies.

The "Conventions of 1883," which were to regulate the companies in their new relations with the state, are the last important expression of the government's policy. We may, then, sum up here the situation as it now appears. The exact position of the road is not only obscure, but it is uncertain. Judging from past experience, this obscurity will lend strength to the great companies. The leases and concessions are to expire in 1950, the guarantees

of interest are obligatory until 1914. "No one can predict whether they will terminate then. Up to 1895, the great companies had received from the state 22,800,000,000 francs." These payments were necessary to make sure that roads would be run at all. While the companies are all solvent at the present time, the course of French politics, the uncertainty of finance, and the power of the railways are such that assumption by the state may become necessary at any time.

"In all, the great companies operate about 20,000 miles of lines. The responsibilities of the government for them are very burdensome; the interest guarantees are the most important cause of the embarrassment of the French Treasury."<sup>1</sup> "It has been aptly said that France has made the railways, not altogether her servant, but in large part her master."<sup>2</sup>

We have seen that France has suffered in some ways by her interference in railway construction. Now, we may ask, what has she gained?

First, she has avoided waste. It seems as if there has been less capital expended in France for the duplication of roads than in any other nation in the world. Excepting the feeble attempt at competition in 1871, there has been practically none. "From the time of its organization in 1842 to the present time, the railway system was based upon the fact that Paris was the central point of France. All the main lines radiated from Paris, each with a particular field to serve, and guaranteed in the possession

<sup>1</sup> Théry, 165, 179, 208, 217, 220.

<sup>2</sup> Sterne, 24-5.

of that field. France has, therefore, notwithstanding the comparatively small mileage to a given amount of population, the most complete service at the least cost of original outlay of any nation in Europe. For, while the French railways have cost a considerable amount of money per mile, "there is substantially no unnecessary duplication of mileage anywhere in France."<sup>1</sup>

From this, and the identification of the government's interest with that of the roads, arises a second advantage. It is the steadiness of railway investments. The importance of this is easily lost sight of, but those who are accustomed to the wild fluctuations of American railway bonds and the frauds perpetrated upon investors should be able to appreciate it. Even in the isolated instance of competition, investors were not disregarded. "After the war and in numerous other crises the credit of the state and that of the companies have lent one another very substantial support." Investors on a small scale are well protected and might stake their all in railway stock. "In spite of the great number of securities thrown upon the market in the period from 1871 to 1876, not only did the stocks of the companies maintain a high quotation, but in 1876 the average closing was appreciably higher than that of the year 1869."<sup>2</sup> The advantage to one class in France, the investors, is well secured.

The third advantage is also one of steadiness. It comes to the shippers in the shape of uniform rates not subject to the fluctuations of what we know as

<sup>1</sup> Sterne, 28.

<sup>2</sup> Théry, 69-71.

rate wars. Immunity from competition makes discrimination unnecessary. The only difficulty is in getting low rates, as "the companies have the initiative, the governmental administration the veto in changes of rates."<sup>1</sup> To cause a change of rate is not easy, but between low rates and steady rates the latter should be chosen. That the French think so is shown by the quotation which follows :

"The relations between the community in France and its railroad system are reasonably satisfactory.<sup>2</sup> Indeed, those managing the railways look with simple astonishment on the wild fluctuations in the railroad tariffs incident to the American method of operation. They do not hesitate to say that if similar outrages were perpetrated on the French people and business public by the railways, the question of state ownership of the railways would immediately assume a new shape."<sup>3</sup>

The fourth advantage is an economic one. It goes far to balance the losses, both political and pecuniary, which the state has brought upon herself by her policy of interference. First, an indirect benefit has been received, a benefit over and above what the government would have received if the railways had been left to private initiative. The construction of railways in a country where, on account of the excellence of the highways and waterways, they would not naturally find a rapid extension, was hastened by the interference of the government. "Not only did the government receive taxes from the railways; its resources for

<sup>1</sup> A. T. Hadley, *Railway Transportation*, 201.

<sup>2</sup> Sterne, 25.

<sup>3</sup> Adams, 108.

taxation were wonderfully increased by the rapid augmentation of taxable value which a thousand forms of property take wherever a railway penetrates."<sup>1</sup> Further, a very tangible direct benefit has been received. The French Government is in a large degree administrative. In all departments of administration the saving in transportation accounts is very large. For the Department of Post and Telegraphs the railway service is free; sailors, soldiers, and munitions of war are transported without charge; and tobacco, in which the government has a monopoly, costs the government nothing for freight. Add to this the advantage of a railway corps trained for war, and the direct money saving is not slight. "For transportation alone the savings of the government for the year of 1890 were estimated at 124,543,907 francs, or more than \$24,000,000. But we allow for the fact that these are the figures of the companies."<sup>2</sup>

To sum the case up for and against the French system, we may say that the roads were built quickly, economically, and well; that the service is efficient, and that no roads were built which would not have to be built. While it is clear that many errors were avoided, we must admit that the political experience of the state has not been creditable or glorious. What would have happened if the roads were left entirely to private enterprise we do not know, but it is plain that in the management of the railways the connection between the roads and the government is now so close that nothing could be

<sup>1</sup> Théry, 210.

<sup>2</sup> *Ibid.*, 211.

gained from state management. The roads are organized in accordance with a ministerial decree. The directors are under the orders of the Minister of Public Works, and are members of the "General Commission for the Management of Railways." Thus the railways are managed by an administrative government commission composed of the Minister of Public Works, the directors of the company, the inspectors of railway finance, and the commissaries general of the roads. The commission meets at the call of the Minister to discuss matters of railway policy, and they publish a report of their findings.

The matter of rates, which is so important in this country, is of minor importance in France.

"To reduce rates is not a part of the commission's work; indeed, there can be but little doubt that the general effect of the system has been to prevent the reduction of rates. The question of local discriminations and competition in rates, as we know it in America, is unknown in France."<sup>1</sup>

The method of dealing with rates is as follows. All changes come from the companies, and are required to be submitted within one month after adoption to all the chambers of commerce in the country. Proposals by the roads must thus first be submitted to very rigid and representative criticism. It is then submitted to the commission to be accepted or rejected as they decide. If the change is accepted, it cannot go into effect until one month after publication. If it is vetoed, there is no

<sup>1</sup> Hadley, 201.

alternative but to withdraw the proposal. The Ministry may even propose a change as a substitute for the railways' proposal, but the railways have a choice between accepting the proposal of the commission and withdrawing their own proposal, thus leaving the old tariffs untouched.<sup>1</sup> It is thus seen to be very difficult to disturb the rates. Indeed, on account of its own interest in the roads the government is, in some degree, not anxious for changes. Indeed, the thought of making the roads as useful to industry as possible is not uppermost in the minds of the French people or their statesmen. Let the credit of the roads be good, so that it may aid the national credit, let the investment of small amounts in the railways be safe, let the lines be ever ready to despatch troops to the frontier, and the desideratum is attained. In short, " railroad transportation in France is treated from the financial and political standpoint rather than from the industrial."<sup>2</sup> With us the industrial side has been the most prominent; financial security and political expediency have been neglected.

<sup>1</sup> Sterne, 26. *Encyclopédie*, xii., 840, "Art. Contrôle." Findlay, 236.

<sup>2</sup> Hadley, 201.

## CHAPTER III

### RAILWAY REGULATION IN ITALY

NO country has had an experience with railways more worthy of study than Italy. The lessons are the same as those of France, but in France the significance of a change of policy was obscured by many and complex political considerations, and it will not do to draw conclusions.<sup>1</sup> The working of government control in Italy has not only been clear, but it has been brought into relief by the contrast of the various systems she has tried, one with another. The roads were first in private hands, were bought by the government, and, later, leased to private companies. Each change was well considered, and the reasons are apparent. The commission system was tried in Italy, and the arguments for and against receive a perfect illustration from its experience.

The railway history of Italy may be divided into four periods. The first, 1859-1866, was that of the extension and consolidation of the roads by private enterprise with aid from the government. The second, 1866-1879, was one of guarantees of interest to private companies, in imitation of the French system, and state construction of roads to

<sup>1</sup> Hadley, 201.

compete with the private lines she was supporting: in the third, 1879-1885, the state owned and operated all the roads; in the fourth, from 1885 to the present time, the roads have been operated on a lease by private companies. As each period brings out a new policy, we may best follow the history from the point of view of the government.

Italy did not exist as a united kingdom until 1870. Its railway history begins in Sardinia, the nucleus of Italian unity. Railways had already been built at the time of the Peace of Villa-Franca (1859), by which Austria established the independent Northern Italian Government. At this time the greater part of the railroads of Northern Italy were managed by Austrian companies. It was the desire of Italy to be rid of the Austrians, and they looked forward to the purchase of the railways as the best means. In anticipation of this they encouraged the Upper Italian Company to undertake a large amount of railway construction. It was their policy to build this company up by concessions, money advances, and loans of the government credit.

This was the first phase of state aid. The next was the guarantee of interest in the French style. The Upper Italian Company had enjoyed these guarantees under its Austrian concessions, both on bonded indebtedness and net proceeds. By the terms of the Peace of 1866, the Italian Government assumed these guarantees. When, in 1870, the Northern Italian Company acquired the Roman railways, the guarantees were extended to them. But although the state advanced this company upwards

of \$10,000,000, its financial condition grew worse and worse. The shares upon which a dividend of 8 per cent. had been paid in 1864, yielded in 1874 only  $1\frac{1}{2}$  per cent. The same policy was pursued in the case of the Southern Railway, which served the shores of the Adriatic. In the period from 1863 to 1879 the state has paid to this company in guarantees, subsidies, and constructions \$70,000,000.<sup>1</sup>

Previous to 1879 the state had undertaken little construction. Of the 5000 miles of railway in operation in that year less than one quarter had been built by the state, but almost all the rest was built under guarantees, and Italy had expended almost as much on them as if she had constructed them originally. This was because the wretched state of her finances did not permit her to dispense with private capital. But in 1879 the state became bolder, and undertook a series of constructions, embracing about 4000 miles, at an estimated cost of \$246,000,000, of which one sixth was to be at the expense of the communes, the rest at the expense of the state, \$12,000,000 to be advanced each year. This plan was soon found impracticable. The old lines depended so much on the state that an extension of state competition was impossible. The only thing for the state to do was to own all the roads or to own none. It was surely to the interest of the state, under the circumstances, to get them all. This was done, and Italy entered into an entirely new relation with the roads—that of exclusive owner and manager.

<sup>1</sup> Sterne, 33-7.

This relation lasted from 1879 to 1885, but neither state ownership nor state management was regarded as a finally accepted system. In 1878 a commission had been appointed by the Italian Government, composed of fifteen members, six being Senators, seven being Deputies, the remaining two, engineers. This commission was to report a plan which should determine the permanent policy of the government.

The work of this commission is without a parallel in railway history. Like the Massachusetts commission, it had no power. "The commissioners had to listen; they might investigate and report; they could do little more."<sup>1</sup> But they went to work vigorously and systematically. It began by circulating throughout Italy, among all classes who had any interest in railroads, a series of nearly two hundred printed questions. Answers, oral or written, were invited to any or all the questions, and they were made so explicit and precise that each who had a special bit of information might find a category for it.<sup>2</sup> "The commission sat in every large city of the Peninsula, took oral testimony, and invited essays from all who had or claimed to have any understanding of the question."<sup>3</sup> An enormous stock of information was got at in this way, but the material was very bulky. It was not until the year 1881 that it was ready for reporting.

The report which embodies the labors of this commission is in seven quarto volumes. Three contain the oral testimony, three give a digest of the written answers and other material used, the seventh

<sup>1</sup> Adams, 139.

<sup>2</sup> Hadley, 227.

<sup>3</sup> Sterne, 39.

is the text of the report itself. It has since been bound in two volumes and published.

"The conclusions which the members reached were: That it was well for the state to own the railways, but unwise for the state to operate them; that it was advisable to lease the whole railway system to private corporations. Their arguments were: That this was the best way to strengthen the finances of the government and to ensure efficient public service; that by this arrangement two great evils would be done away with; the first, the demoralization caused by the appointment and control of an army of railway officials; the second, the centralization of the vast power of appointment and the burden of constant supervision to prevent its abuse."<sup>1</sup>

The commission had, with these arguments, to combat very strong prejudices. Many interests were bound up with the ownership of railways by the government. "The railway system had become a sort of general hospital for friends, relatives, and political hangers-on of local Deputies." In the matter of rates there was the same situation. "Annually a general scramble took place to fix the tariffs to suit local and special interests. The rates came to resemble a Congressional river and harbor appropriation."<sup>2</sup>

But the prejudice of localities was not greater than that of the whole nation. To advocate government control was an article of the Italian patriot's

<sup>1</sup> *Commissione d'inchiesta sull' esercizio delle ferrovie italiane.* Roma, 1881-4. 2 vols. Harvard Lib., vi., 8916.

<sup>2</sup> Sterne, 38.

faith. "The greater part of the higher *personnel* of the largest Italian railway system was composed of Austrians. These men had achieved their positions through years of active study of the interests they were called upon to serve, and they were devoted to their work."<sup>1</sup> In replacing them by inexperienced Italians whose usefulness did not extend beyond the sphere of politics, the Ministry and the Legislature were bargaining for popular support. Under private management capable Austrians would be retained to the exclusion of inexperienced Italians.

Public opinion, however, was counteracted in part by the straits in which the national Treasury found itself at the moment. Aside from the fact that the roads had become so burdensome to the government that there seemed little likelihood of running them in the future at anything like a profit, there was staring the government in the face a deficit of over \$50,000,000.

It has been said of this commission that its task was to make popular a plan which the government was forced to adopt. Yet it is conceded that its straightforward work and the acceptance of its recommendations depended upon the convictions of a public that had been set thinking. This is one of the strongest recommendations that can be made for a body of experts representing a democratic community. Another point in favor of this commission was its economy. It undoubtedly saved much useless debate and aimless investigation. Apart from this, and as compared with other commissions, it

<sup>1</sup> Sterne, 38.

was a model of business-like public service. "The total expense involved in this immense work, lasting between two and three years, was \$27,000." The salaries of only two of the English commissioners amount to \$30,000. For the commission from 1873 to 1888 there was a third commissioner, with a salary of \$15,000; for the commission provided for in 1888 there were several assistant commissioners. We need not estimate the amount of expenses which an English commission is capable of running up. For the four Massachusetts commissioners the salaries amount annually to \$14,500. The three New York commissioners get \$24,000 a year. Thus, whatever the inner working of the commission was, its task was performed thoroughly, efficiently, and with little expense.<sup>1</sup> Admitting that its only result was to bring to the aid of a plan which the government had preconceived as inevitable the pressure of an enlightened opinion among the general public, then we have conceded to it an eminently successful performance of that very task for which a railroad commission should exist. Although the commission, whose work we shall discuss more fully, is a permanent one, and works under different circumstances,

*cupiens*

<sup>1</sup> Sterne, "Some Phases of the Railway Question in Europe," *Q. J. E.*, 453 *ff.*; Sterne, *Report*, 37; Jeans, *Railway Problems*, 87; Hadley, 227; Patterson's *Practical Statutes*, 1873 and 1888, 36, 37; Vict. Cap., 25, 51, 52; Vict. Cap., 48.

A point not mentioned by Sterne, in his criticism of Hadley, is that Italy was planning to resume specie payments. She passed a law for resumption, April 7, 1881. A. B. Houghton, "Italian Finances from 1886 to 1884," *Q. J. E.*, iii., 233, 373, January and April, 1889.

the principle upon which it rests and the power which it brings to it said, namely, straightforwardness and publicity, are identical with those of the Italian commission. This commission did bring public opinion to its side. It rescued Italian railroad policy from a sea of doubt and sent the government forth determined upon a fixed course.

The projects of the commission were immediately carried into effect. In 1885 the roads were leased to three companies, for a period of sixty years, each party to have the right of terminating the lease at the end of each period of twenty years, the companies to advance on the rolling stock \$53,000,000.<sup>1</sup> When dividends are in excess of  $7\frac{1}{2}$  per cent. the company divides with the government. The government receives as rental 2 per cent. of the gross receipts of the roads.<sup>2</sup> The situation in Italy is now somewhat like that in France. The permanent government control is in the hands of a commission under the headship of the Minister of Public Works. It is composed, as in France, of delegates from the government and the railroads, elected by their colleagues in the bodies from which they are chosen. The work of this council is not primarily to manage rates, but to study the wants of the country. Yet all tariff regulations involving a change in the tariff are first submitted to the Minister of Public Works, and then, with his recommendations, to the Parliament, there to be finally accepted or rejected. To aid the Ministry, inspectors are appointed throughout the kingdom to report the complaints of localities.

<sup>1</sup> Sterne, 39.

<sup>2</sup> Larrabee, *The Railroad Question*.

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With their assistance the rates, especially those on freight, are elastic to the minutest particulars. The government has a free hand to lower rates, so long as its recommendation does not affect more than one half of one per cent. of the net income. In Italy, as in France, both the railroads and the state are protected against arbitrary changes by the interest of the latter in the dividends of the roads.

## CHAPTER IV

### RAILWAY REGULATION IN AUSTRIA

THE railway history of Austria has much in common with that of the other nations of Europe. There has been government interference of many sorts, attempts at state ownership, attempts at competition with private companies which enjoyed the subsidies of guarantees of the state, and attempts to lend the railroad system to the political, financial, and military necessities of the nation. But two truths which are shown by the experience of the other countries of Europe are brought out with especial clearness in that of Austria. The first is that whenever a nation, after leaving to private enterprise the development of a part of the network, itself embarks in railway construction, either of two things will happen: either the private companies will get the most productive territory, the unpaying districts being left to the state, or the private companies will, in some way, make it profitable or necessary for the state to shoulder the whole system. This, as we have seen, has been the experience of France and Italy, and, as we shall see, of Belgium and of Austria. The second truth is that the most effective regulation is a penetrating and intelligent public interest guided by thorough publicity of all railroad

## 36 Railway Control by Commissions

matters; that the best form of control, in the long run, is that which most effectively maintains public interest and brings public opinion to a head.

When railroads were first introduced, Austria was the home of the most bigoted conservatism. The Austrian court and Austrian statesmen, Metternich in particular, looked upon the new contrivance with distrust, as a dangerous step toward radicalism. Until 1836, the ruling class in Austria discouraged railroads, and, as has been well said, from their own point of view, they were right. In that year, however, the Emperor yielded to the persistent demands of private enterprise, and granted to Baron Rothschild a charter for a road from Vienna into the province of Galicia. To Baron Sina a charter was granted for a line from Vienna to Raab and Gloggnitz. But the Emperor's real attitude toward the new ventures was shown by the words he let fall as he signed these charters: "The thing can't maintain itself anyhow."<sup>1</sup>

If this prescience on the part of the Emperor had come from any depth of thought on the subject, there might have been suggested the corollary that if private enterprise could not maintain the railroads, the state would have to. Railroads insisted on coming whether monarchical government liked them or not. The state soon decided that it did like them. It began by granting to each road a monopoly in its chosen territory during the period of its charter.<sup>2</sup> Then guarantees of interest were made.

<sup>1</sup> Hadley, 208-9.

<sup>2</sup> Hadley, 209; Larrabee, 58.

Finally railroads rose so high in the favor of the government that the state began to construct for itself lines which private enterprise was not disposed to undertake. The period of state construction lasted from 1840 to 1848. Then began that series of political events which was to set the Austrian Government at such a disadvantage in its rivalry with private companies in the management of the railways. The first shock came in 1848, the year of revolution throughout Europe. At the outbreak of the Hungarian War the best state railways were immediately sold for cash. What the real reason for this particular action was is immaterial. Hadley says that the sale was made to assist the railway companies. Sterne says that this is the idealistic conception of a well-meaning but unpractical and inexperienced college professor. The state, he says, had no idea of helping anybody but itself. The state did not give up its railways because it could not run them at a profit, nor because state ownership was inconsistent with their economical and efficient administration, but because Austria was in need of funds. She simply sold her best assets to obtain money for other and more vital purposes of government.<sup>1</sup> These two interpretations may well be partial explanations. The whole truth seems to be that when a government finds itself in straits railways are a particularly difficult thing to hold. Austria did not succeed in accomplishing this task. In 1853 many lines were sold at about half their cost

<sup>1</sup> Hadley, 209-10; Sterne's *Report*, 41; Sterne, *Q. J. E.*, i., 454.

of construction.<sup>1</sup> With the abandonment of Northern Italy, Austria had to let go some of the most important connecting links in the trunk lines of the Austrian system, while they were yet in process of construction. Nor, in the trying experiences which the state was undergoing, were the private companies imbued with any of the sentiment which Hadley supposes the government cherished toward them.

They were interested in the railway companies, not in the fortunes of the government. The poor service afforded by the railways has been pointed out by a high authority as a potent factor in the defeats of Austria, by France in 1859, by Prussia in 1866.<sup>2</sup> In the furious construction that sprang from the wild speculation in the period from 1866 to 1873 there could have been little *entente* between the government and the companies, for when the final crash came in 1873 the ruin was suffered ultimately by the government, even where it had none of the chances of profit. The result was that the government was forced into a policy of more active interference. Of the results of this we shall hear later. An extension of the old policy of state construction was another phenomenon of the reaction. If the state were to bear losses it might as well have the profit. In most cases, however, this consideration was not necessary to impel the state to resume that policy, which, though now abandoned for twenty

<sup>1</sup> Hadley, 210.

<sup>2</sup> Col. von Frendrickh, quoted in Findlay, 291-96; see also Hadley and Sterne as above, and Larrabee, 57.

years in Austria, had been maintained in Hungary. There were certain roads which private enterprise would never undertake.<sup>1</sup> Such were those in Styria and the Austrian Tyrol, whose importance was mainly strategical; such were those from Vienna to the outlying frontiers and to the provinces, the value of which was mainly political. In 1886 the lines in the hands of private companies composed three fourths of the entire network. By 1891 the portion owned by the state amounted to one half. In 1875 the total length was 10,790 miles; in 1891 the network of the state alone amounted to 8600 miles, the great total had been increased to 16,400 miles. Though the state has recovered the grip which it lost just after 1848, Austria still finds itself in the anomalous position of having its worst lines in the hands of the state, its best in the hands of private corporations.<sup>2</sup>

The policy of government interference above referred to connects itself very closely with that phase of the Austrian experience which shows so clearly the effectiveness of publicity as a means of railway control. The crash of 1873 resulted in an investigation. One of the revelations was that a large proportion of the railways built from 1866 to 1873

"not only did not open up any new territory, but owed their origin to speculation pure and simple and their continued existence to the traffic they could sponge out of the roads already in operation. And for the construction

<sup>1</sup> Sterne, *Report*, 41; Hadley, 212; Larrabee, 58.

<sup>2</sup> Sterne, *Q. J. E.*, i., 455.

of these roads the government made great sacrifices in the way of guarantees."<sup>1</sup>

The second revelation was that the entire debt of these roads was unsecured, that is, secured only by mortgages which, owing to a failure to have them recorded in the prescribed manner, had no legal standing in Austria. This was noticed only when one road after another declared itself unable to pay interest. Yet the existence in 1868 of an advisory commission, with the simple powers of the Massachusetts Commission, namely, to investigate and report, would, by doing nothing more than informing the public of the nature of the work, have prevented loss to the public and to the state, financial crisis, and the demoralization of public confidence.

A new era has dawned upon Austrian railway management.<sup>2</sup> The work of this era has been the popularization of the railways. The method has been to simplify their regulation and to rely for their control mainly upon publicity. Indeed, this movement in Austria and Hungary is a most striking illustration of the efficacy of public opinion brought to a head by intelligent discussion. What may be called a social revolution in railway traffic has been brought about, not, be it remembered, by government initiative, but by public discussion. As the most prominent forces in this movement there

<sup>1</sup> Emil Sax, *Die Verkehrsmittel*, ii., 521; quoting the commission's report written in 1877; Hadley, 211.

<sup>2</sup> J. Wessely in *Annals American Academy for Political and Social Science*, September, 1890, i., 345, 346; Jeans, *Railway Problems*, 83.

stands out, first, the national rivalry between the two dominant populations of the Austrian Empire, the Germans and the Hungarians; second, the influence of the clubs of railway officials; and, third, the influence of the Austrian school of economists. The principle upon which these forces met was that the greatest utility could be gained from the roads by reducing fares and freights in such a way as to increase traffic. "In 1883 Mr. Hertzka, an Austrian economist, undertook by a systematic effort to convince railway managers in Austria that the time had come for a decided reduction in passenger rates. He proposed the system which has since become well known as the zone system,"<sup>1</sup> of which the general plan is to make the element of distance of less importance by making the unit of distance, on which the charge is computed, much larger. The plan was presented for discussion to the Club of Austrian Railway Officials. It was agitated in the Austrian newspapers to such an extent that the subject attracted much attention outside the kingdom, and, among other countries, in Hungary.

"Now, there is a sort of perpetual rivalry between the Austrian provinces and Hungary, in all matters not only of politics but of industry as well. Thus the State Railway Office in Hungary was impelled by popular and scientific discussion to take the first step. Then, when the Hungarian management had adopted the zone system, public pride in Austria was deeply wounded. The

<sup>1</sup> For full discussion of the zone system see James, in *Q. J. E.*, January, 1891, v., 168.

Austrian railroads were severely criticised for their slowness and seeming neglect of public interests."<sup>1</sup>

The system which was adopted in Hungary in the summer of 1889 went into operation in Austria June 16, 1890.

This change was applied only to the passenger service. Its advantages are already proved. It makes the rates simple and easy to understand; it reduces rates very much, yet the traffic has increased to such an extent that there has been a net gain to the railways.

"In Hungary, the number of passengers rose steadily from month to month, the increase for the first five months being over 133 per cent.; the returns for the first eight months—to April 1, 1890—show an increase of 169 per cent., with the tendency steadily upward. Local traffic in this time increased 1600 per cent."<sup>2</sup> "In Austria the experience of the first three months has satisfied the managers of the state roads that they are on the right road. Such an impression has been made on the managers of private roads that four of them have made an agreement to adopt the new system beginning the 1st of October, 1891. Further, the Hungarian State Railway Office has proposed to extend the system to the freight service, hoping that the same success will follow."<sup>3</sup>

Here, then, we have seen the value of movements

<sup>1</sup> James, *Q. J. E.*, January, 1891, v., 169, 177.

<sup>2</sup> *Ibid.*, 177.

<sup>3</sup> *Ibid.*, 183-84; see also Hadley, *Forum* for April, 1891; Larabee, 59.

which start and acquire their force among the general public. Such a movement is worth the expense of a commission for many years. The work of Hertzka and his friends was just such as is done by the advisory commission. Apart from this, the work of railway control in Austria has been done by the ministries of commerce and public works. Under their direction a state organization supervises the railways and regulates them with special solicitude for the interest of the public. By the adoption of the zone system this work has been much simplified. It is the desire of the government to simplify it more.

## CHAPTER V

### RAILWAY REGULATION IN BELGIUM

THE particular thing which Belgium shows to us is the value of one disinterested man of superior ability to the railway system of a country. Leopold I. of Belgium, a prince of the house of Saxe-Coburg, came to the throne in 1831, after an exile in England. Belgium had at the very start, what none of the countries whose railway experience we shall study had, a man of superior intellect, who had watched for some years the experience of another people in railway management; and this man had the power to make the fullest use of his observations. When we find that the plan upon which the Belgian railway system was first projected has been maintained without a break, we are ready to believe that this man used the power conferred upon him; and when we discover how many advantages have been gained from the excellence of this plan and how many mistakes avoided, we shall concede that he used his power well.

Owing to the variety and activity of the industry of Belgium, and to her well-defined lines of trade, it was possible to plan at the outset that system in railway construction which other countries have either never attained or have hit upon empirically.<sup>1</sup>

<sup>1</sup> Hadley, 212; Adams, 206.

It was the desire of the government to own all the roads. Since, however, the state could not meet the demands of trade, the following plan was substituted. The government was to construct the main lines itself, but granted charters to private companies for smaller lines running between the main lines or feeding them.<sup>1</sup> The essence of the policy is this. Railways should be owned by the state and operated for the benefit of the public, as the Post-Office is managed in America. "Only that was left to private initiative which would bring from competition only its benefits."<sup>2</sup> This work in Belgium corresponds to that done by our system of mail-wagons, which carry from the smaller to the greater distributing centres. We may follow out this plan, first, as to the financial relations of private roads with the state, secondly, as to the distribution of lines.

The plan was to have main lines and feeders compete on a footing of equality. Charters were granted for ninety years. At the end of this time the state should assume the roads for the payment merely of the rolling stock. But the right was reserved to the state to assume them at any time by binding itself to pay to the stockholders an annual sum for the unexpired balance of the ninety years equal to the average net annual receipts computed on the seven years last preceding. Until the charters should come to an end, the several roads could do as they pleased as to rates. The government could regulate the rates by competition. By this very simple

<sup>1</sup> Adams, 95-8.

<sup>2</sup> Findlay, 220.

arrangement the railroads were for the first and only time in history brought under the ordinary rules of competition. No combination was possible as against the public. "The government found itself in a position to regulate the whole system through the ownership of a part. In consequence cheap railroad transportation was established very early. Under its influence the country and the railroad system developed with amazing rapidity."<sup>1</sup>

The state commenced the construction of railways as early as 1834. Four great state lines were stretched out in different directions. In a few years, after the more remunerative routes were occupied, charters were granted for private lines to run between them.<sup>2</sup> This system worked wonders for a time. It was said, however, in a preceding chapter, that whenever the government tries to compete with private railways, it either gets the worst roads or ends by owning them all. In Belgium the state had made sure of the best roads at the outset. It took the alternative, and acquired them all. Up to 1870 the state was in the position of being by far the richest and most powerful railroad company of its system, holding in check and regulating other inferior companies which it had taught to compete with it on terms of equality. The roads began to

<sup>1</sup> Adams, 96, 99. Mr. Adams was so fascinated by the Belgian system that he proposed, as railroad commissioner, that Massachusetts should purchase the Fitchburg road to run it in competition with the private roads of the Commonwealth. See on this Mass. Commission, *2d Report*, iii. *ff.*; *4th Report*, 67, 70, 80, 81, and Hadley, 136, 215, and note.

<sup>2</sup> Adams, 95, 98; Sterne, *Report*, 41; Larrabee, lvi., 409.

learn that this equality was losing some of its reality. The state roads were united. The independent companies were forced to combine, owing to a certain attitude of the government. But, since this would defeat the object of the system, the government resolved to revert to its original policy. This it has done since 1870 by a process of absorption. In 1870 the state owned sixty per cent. of the roads. In 1870 many competing lines had been purchased; in 1872 the road into Luxembourg was purchased. In 1874 it had owned one half the mileage, in 1880 two thirds, in 1886 about three quarters, and now it owns all but a few short lines built in the early days of railway construction.<sup>1</sup> Already in 1886 the rates of all independent lines were based upon those adopted by the State Railways and sanctioned by the Minister. Thus the Belgian system of to-day is that which was originally desired, and not at all like that which really existed up to 1869.<sup>2</sup>

"But nothing that happens after we are twelve matters very much," says Barrie. So, nothing that happened after 1869 mattered very much. It is to the formative period that we can lay the woes of American railroad experience; it is to the mixed system that we must attribute the excellence of the Belgian railways. The first result of this system was a saving of public resources that cannot, for want of a standard of comparison, be estimated. Belgium has the best track system and the most responsive service of any country in the world. This

<sup>1</sup> Hadley, 216; Larrabee, 57.

<sup>2</sup> Grierson, *Railway Rates, English and Foreign*, Appendix, xxvii.

brings us to the second advantage, the rates. During the period of competition they were brought down to the lowest point, and they have not been increased. The freight rates are lower than anywhere else in Europe. Though nominally they are about the same as in the United States, for almost any given service they are practically lower. The passenger rates are lower than anywhere else in the world, except, perhaps, on some of the East Indian railroads.<sup>1</sup> Those who have travelled in Belgium know that the coaches are more comfortable than those of England or any country on the Continent. These conditions are not due to the present system of government ownership, though the efficient administration of the Ministry may well be given the credit of maintaining them. It was in the formative period that the good was done. A good character was infused into the Belgian system long before it had reached the age of twelve. It had a good preceptor at the outset. That was Leopold. He had lived in England and had seen the miscarriage of private construction and the absurdity of the highway theory of railway competition. He had learned that the thing must be guided and planned. It was he who planned the admirable system to which Belgium owes so much. The one conclusion I wish to draw from the experience of Belgium is that the value of the right man in the right place far exceeds that of successive legislatures for decades. This is seen by a comparison of the work of Leopold with that of France or Austria. So the railway

<sup>1</sup> Larrabee, 56; Hadley, 216; Grierson, App., xxvii.-xlili.

commission, which gives us an opportunity to get three or five good men in the right place, gives more chance of railway improvement than innumerable successive legislatures working alone. This will be seen in the experience of the United States and in that of Massachusetts.

## CHAPTER VI

### RAILWAY REGULATION IN GERMANY

THE German Empire of to-day is a loose federation of sovereign German states, one of which, however, predominates in wealth, influence, and political power. This state is Prussia, whose reigning king has, since 1871, always been German Emperor. Not only is the railway experience of Prussia more important and more characteristic than that of any other state, but, when we have seen the relation of railways of the other states to those of Prussia, there will be very little to explain. We shall deal, therefore, mainly with the experience of Prussia. This state has developed for the control of the railways, which since the Franco-Prussian War have been owned and managed exclusively by the state, not only a new executive department and a permanent commission, but an entire representative system. The commission and the two railway councils, the national council and the district council, are as a system extreme types of the commission with power. This organization is almost perfect in its attainment for two important ends. First, it has perfect machinery for finding out public needs and impressing them on the legislature; second, there is absolute certainty that the just demands of the public

will be carried into effect by the legislature and the railways. We have in the United States types of the commission with power. When we see how wofully they lack anything approaching the organization, power, and efficacy of the German organization, and at what a sacrifice of all that is characteristic of American government they can be made half so efficient, we must conclude that our attempts to control railways by commissions with power are deplorable failures. When, also, we notice that under our institutions commercial and industrial organizations give rise to those bodies and powers which in Germany spring from government, we shall be convinced that, with us, the commission with power is unnecessary. When, further, we see that attempts of government to supply those powers, which with us properly belong to commerce, industry, and the general public, discourage regulation by commercial organization, we shall find that the commission with power is positively harmful. This, I believe, is, for us, the lesson of German railway regulation.

It was not until 1838 that railways assumed importance enough to merit legislation. In that year Prussia made a general railroad law which gave color to all German regulations. It was based on the fundamental principle of German political life, namely, that it is the right and duty of the state to regulate all matters, of public interest or private. The Germans do not resent police regulations which destroy the independence of the household and tell men how they shall care for their own welfare.<sup>1</sup> It

<sup>1</sup> W. H. Dawson, *Germany and the Germans*, i., 59-63; ii., 23.

is hardly surprising that legislation should be attempted at the outset to prevent men from interfering with the welfare of others. The legislation of 1838 dealt with the planning of the lines, rates on merchandise, preventing of competition, and safeguards against accidents.<sup>1</sup> Prussia, as we shall see, did not plan to own the roads until after 1870, although she was from time to time obliged to acquire some lines and manage others. The southern states, on the other hand, built their own roads from the first. Thus Wurtemberg, Baden, and Bavaria have always had a complete state system. In these states, as in all Germany, to-day the railway system is worked in conjunction with the postal system.<sup>2</sup> The two are allied departments of the same government. It is suggestive of many of the political notions which Germany has recently given to the world, that in a large capital like Munich there should be one large railway station, and that it should serve as the chief distributing office of the national postal system. This same alliance is suggestive, also, of the relation of the railway systems of the states to the federation of the states. Those states which have a railway system independent of Prussia have, as a general rule, retained an independent postal system. As it would have been helpful to Bismarck's schemes for uniting Germany under Prussia to the exclusion of Austria if he could have persuaded the smaller states to turn over their postal

<sup>1</sup> Sterne, *Rep.*, 29; Jeans, 79.

<sup>2</sup> Sterne, *Rep.*, 28 *ff.*; Findlay, 220; Adams, 112-113; Larrabee, 53.

systems to the Empire, so did he desire to unite all the railways under Prussian control. To this Saxony and Bavaria made a vigorous opposition. As a result there are as yet no imperial railways except those of Alsace and Lorraine. These districts have no status outside the empire and no representation in it. Their railways are under the wardship of Prussia. Though the several states have retained their railways under their own control, it falls to the imperial government in Berlin to meet all difficulties arising out of the federal nature of some of the services performed by the roads and out of their interstate relations.<sup>1</sup> These matters are regulated in the same way as the interstate postal service, the revenues always accruing to the several states. They are referred in the Federal Council to a committee called the Committee on Railways, Posts, and Telegraphs for the Settlement of Federal Disputes. To this committee the Imperial Council grants executive power. Apart from these regulations the interest in German railways centres in the development of the Prussian system.

The present wonderful system of Prussia is, as was the Belgian system, the work of one man. The man in this case was Bismarck. It was when he had achieved the victory of 1870 that the present system took shape. It does not resemble at all what he became acquainted with when he first entered public life. The general railway law of 1838 provided for charters to private companies for a uniform period, with a monopoly of territory, of thirty years.

<sup>1</sup> Hadley, 207, 242, 243; Dawson, ii., 21, 23.

"A board of railway commissioners was established to supervise the construction and operation of railways. They were empowered to call meetings of the directors and officers of the companies for the purpose of laying before them objections to their methods. When the companies had been consulted and allowed to meet objections, a report was to be made to the government departments. The railways were to be notified of the recommendations of the board, and if they failed to carry out the alterations suggested, the right was reserved to the Ministry of Commerce and Public Works to forfeit charters."<sup>1</sup>

The recommendations of this commission were not at all satisfactory to the roads. They were more than the companies could stand. The state was obliged to make up for her demands on the roads by granting subsidies and guarantees of interest. There were many lines which no companies were willing to undertake. Thus the state was forced to engage in constructing railways. There were roads, moreover, which the state was obliged to manage, on account of the inability of the companies to handle them properly. In 1863 the state was managing 876 miles of such lines. At the end of 1866 the total mileage in Prussia was 5896 miles. Of this the state had constructed 1890 miles, and was managing 1000 miles of railway for private companies. The remaining 3006 miles were owned and managed by private companies. In that year Prussia defeated Austria, and the first part of the Bismarck policy was achieved. Prussia had gained the

<sup>1</sup> Sterne, *Rep.*, 29; Jeans, 79.

<sup>2</sup> Sterne, 30.

hegemony of Germany. It remained for him to accomplish his second plan, namely, to isolate France in Europe. Then he would make sure of his first victory. The railways had played an important part in the War of 1866. For the Franco-Prussian War the control was made more suitable for military purposes, with what discomfiture to the French we have already seen. The second victory achieved, Bismarck seized upon the acquisition of the roads by the newly constituted Empire as a stroke which would exclude Austria once and for all from the German family of nations. This the jealousy of the smaller states prevented. As a thing not much less to be desired, Bismarck then gave his attention to the ownership of the roads by Prussia. It is needless to say that a plan which Bismarck cherished was carried out. All the roads were purchased by the states, with what results for Prussia is well known. The effect on the service is not unimportant. In both freight and passenger departments it has gained in promptness, speed, and efficiency. Through traffic has undergone a revolution, and all discrimination in favor of central points or to large shippers has been wiped out. The effects on Prussia it would be hard to estimate. Some of the indirect political effects will appear in subsequent paragraphs. The financial gain to the state may be seen from the following paragraph of Gustav Cohn. After saying that the management of Prussian state railways is the foremost of those branches of administration which satisfactorily perform the public service required of them, and at the same time meet

their own expenses out of their receipts, he supports his assertion by the following quotation from the report of the Ministry of Public Works for 1888:

“ Although neither the industrial activity of the country for the past ten years nor the development of traffic can be said to have been extraordinary, yet the surplus receipts of the state railways during this period have been sufficient not only to pay the interest and discharge the entire debt representing railway capital, but have left, after this has been done, an additional surplus aggregating in round numbers 330,000,000 marks. The surplus receipts of the ten years preceding 1888 would suffice to pay the interest on the aggregate debts of the whole Empire—if that were Prussia’s concern.”<sup>1</sup>

It is pertinently remarked by von Kaufmann that from this amount must be deducted the amounts which the government would receive in taxes if the roads were held by private corporations.<sup>2</sup>

Various incidental advantages of state ownership to Prussia appear when we consider the characteristics of the government system. As the great advantage to Prussia of a good system of roads was military, so is the chief characteristic of the service its militarism. If you look out of a window of a Prussian railway coach in passing even the smallest station, your attention will be attracted by a tall,

<sup>1</sup> Gustav Cohn, *Science of Finance*, Veblen’s translation, § 186, p. 271. Chicago, 1895. Quotation from *Rep. Min. Pub. Works* for 1888.

<sup>2</sup> Richard von Kaufmann, *Die Eisenbahn politik Frankreichs*, 2 vols. Chap. xx., vol. ii., Stuttgart, 1896.

well-built figure, in long, skirted army coat and visor cap, standing with heels together, toes at an angle of sixty degrees, left hand glued to the side, the right touching the cap-visor in military salute. It resembles, on the whole, something between an awkward soldier and a graceful butler. This is about one of 100,000 railroad employes,<sup>1</sup> all of whom have served in the Prussian army, and are regularly appointed members of the civil service. They are especially trained for the railway war service. In time of peace they are under the orders of the Department of Railway and the Ministry of Public Works. For military purposes all the lines of Prussia are divided into four groups.<sup>2</sup> Instruction in the operation of the road is given to commissioned and non-commissioned officers of all arms of the service, courses being given at the various stations, and lasting two and a half months. In time of war or for any great mobilization the whole railway system is turned over to the army to be worked by a special staff of officers.<sup>3</sup>

It is almost unnecessary to say that this success of state management in Germany would be impossible without that excellence in all branches of the civil service which is proverbially conceded to the Germans. Every citizen is trained in the army to fidelity, earnestness of service, and devotion to the interest of his country. This semi-military character

<sup>1</sup> See, for figures, Hadley, 208; Dawson, i., 66, 67.

<sup>2</sup> The relation of road to the state in time of war was defined by the Act of 1871.

<sup>3</sup> Findlay, 285-7.

of the railway service makes the soldiers of the nation desirable railway servants. Not only are places found in this service for faithful soldiers, but for army officers who have grown gray in the country's service are found posts in which their high mental and moral training can be applied to honorable public duties. The effect of this plan upon the army is not less remarkable than its effect on the railway service. Not only are men of the highest qualities attracted to this service by very small pay, but the army is kept supplied with young blood. It is no longer a cruelty to jump a capable young officer over an aged one. The railway service is one of honorable retirement ; thus promotion and the recognition of merit are made much more easy in the army.<sup>1</sup>

Another characteristic of railways which is an inevitable concomitant of militarism and state control is the development of the central - station idea. Where Paris has seven large stations, none of them suited to receive large bodies of troops, except, perhaps, the "Gare de Strasbourg," every large city in Germany has one immense station. The tendency since 1871 has been to combine all the smaller stations into one central station and to make this station so large that through it tens of thousands of men can be concentrated at one central point. Although in France, at the present day, arrangements are made by which large bodies of troops can be

<sup>1</sup> For a "Review and Discussion of Recent Criticism of Technical Administration and the Civil Service of Prussian Railways," see F. W. Taussig in *Q. J. E.*, ix., 77-87, October, 1894.

concentrated at any point on the frontier within a very few hours, troops brought from different points of the frontier are laid down in seven different parts of the city. The central-station idea dates from 1871. A comparison of a *Baedeker* of 1870 with one of the present day will show to what an extent this idea has been carried. A comparison of a recent map of Paris with one of any German city will show at a glance the great strategic advantage which Germany has derived therefrom. The new station at Frankfurt is large enough for the mobilization and sheltering of a small army. It is the largest in the world. In Strasburg the writer was awakened one morning just before dawn by the sound of martial music. Running to the window, which overlooked the immense square before the railway station, he beheld what seemed an entire army of infantry march into the square, form into regiments, and then glide silently into the station, leaving him with his forehead against the window-pane to wonder how one railway station could swallow so many men.

From the efficiency of the railway civil service and the centralization of the roads, one would think that the Prussian system would be managed by a very simple control. The opposite is the fact. In other European countries the Ministry of Public Works is sufficient to regulate matters. In Prussia, this Ministry, with its auxiliary department of railways, is at the apex of a complete representation system. The national legislature takes cognizance of railway matters; the Ministry alone can make all

rules of general import; but where conflicting interests are concerned, a new organization is needed. It has two branches; the one consists of a national council, the other of one council for each department or district where there is a "state-direction" of railways.

The members of the national council are as follows: a president and vice-president appointed by the king for a period of three years; nine members representing the ministries of public domain and forests, of commerce, and of public works; three being elected by each ministry to serve three years; one member from each of the four cities, Berlin, Cassel, Wiesbaden, and Frankfurt; two or three members from each province elected by the departmental councils; a schedule of representation being fixed by law in accordance with which men must be so chosen that they shall represent in due proportion the commercial, industrial, agricultural, and corporate interests of certain cities.

Members of the departmental councils are elected in the district to represent such interests as the three allied ministries above referred to may designate as entitled to be represented.

In this system every interest, both national and local, has adequate representation. In the departmental council grievances are discussed, remedies suggested, and the effect of every tariff change on every industry considered. Recommendations are made as the case demands to the district "board of direction" or to the "general direction" at Berlin, thence to the Ministry. In the event of arbitrary

or unsatisfactory action by the district "direction" or the general "direction," matters are reported to the "national council"; from the Ministry appeal is had to the national legislature. The debates and resolutions of the local councils are printed and laid before the national railway council; the debates and resolutions of the national council are, in turn, submitted annually to the Reichstag and to the Minister of Public Works. Thus the effect of every change is submitted to the scrutiny and discussion of the representatives of every class affected thereby, and every effort is made so to organize the general and local councils that the authoritative and final decision of the ministry shall be a just and enlightened one.

For the amount of government and the complexity of organization for railway control, Prussia leads the world. It will be noticed, however, that the idea at the bottom of it all is that of the advisory commission. The government does not attempt to regulate the railways by the ordinary machinery. Yet the railway department of the executive, which occupies the place of the railway directorate of private railways, is bound by nothing but the acts of the national legislature. The organization of the councils has no other power than to investigate, discuss, and recommend. The council organization is, in fact, a commission. It is cumbersome, indeed, but may be analyzed into a commission just such as we know in the Massachusetts Commission. We must first eliminate the district councils. They, it will be observed, represent special interests. In

America their place is taken by municipal councils, trades-unions, and chambers of commerce. The difference is, first, that they have no special representation before the legislature; secondly, that they have no permanent organization on the subject of railways. In Prussia these interests are given a legal status, and their organization is so perfect that public management responds quickly to every need of the nation's industry. Eliminate this organization, and there remains the national council, a veritable advisory commission. It is well worth study, particularly as to its membership. It is to be observed of this that the fact that not all of the officials are paid renders its membership list less formidable, and that membership is representative. But the point to be noticed above all is that the council has no power, that its policy is "tentative but persistent, that its key-note is publicity and discussion."<sup>1</sup>

<sup>1</sup> For the facts, see Sterne's *Rep.*, 28-35.

## CHAPTER VII

### RAILWAY REGULATION IN ENGLAND

THERE are many reasons why the railway experience of England has more lessons for us than that of any other country. The most obvious reason is that the customs, political institutions, and the body of rules that regulate the ordinary intercourse of men, namely, the common law, are almost the same for both countries. Our ideas of the relation of the individual to the government are very similar. Further, the two countries have in this respect had almost a parallel experience with their railways, and to-day both are grappling with the same problems. If anything, the experience of England foreran ours by a few years. At any rate, we find some of our most important policies mapped out previously in Great Britain. The existence of such relieves us of the necessity of finding a deeper reason for some of our own acts. The two countries have gone through almost parallel periods of railway history, and though England has, thanks to her conservatism and to her geographical and political compactness, escaped some of those difficulties which remain, in consequence, peculiar to our experience, yet the course which the attitude of government to the railways has run has been the same in both countries.

The course which the policy of the government has gone through in England is "one of the progressive intensification of control."<sup>1</sup> It is proverbial that in the beginnings of railway construction both England and the United States gave the railroads free play. This is absolutely true of the United States, and if we recall the early attitude of some Continental countries it is practically true of England. On the Continent there were other considerations than the needs of industry and the convenience of the public. There the political and military interests of the nation became, very early, bound up in the railway system. In Continental countries we have found many instances where

"the state has been induced to assume direct administration of the railway system, not only in order to have unhampered control of the lines in case of mobilization and war, but also in order to the construction of the shortest lines or lines most desirable for military purposes."<sup>2</sup>

It is probably in this way, rather than by any conscious plan, that these nations escaped the results of competition, which England and the United States experienced. On the Continent, if we except the period of universal competition from 1866 to 1873, there has been very little of it, and that during these seven years was the result of uncontrollable speculation. Until 1870 England advocated competition, and deprecated the consolidation,

<sup>1</sup> J. Mavor, "The English Railway Rate Question," *Q. J. E.*, viii., 386, April 1, 1894.

<sup>2</sup> Cohn, i., 270.

which was working itself out, as dangerous. Indeed, if railroads were to be built at all, competition was inevitable, for England was always served by an admirable network of canals. But if England has suffered from competition, she has not, nor has her industry, experienced the disadvantages of government administration.

“The state which finds it necessary to use railways as a means of defence, finds itself obliged, again and again, to assume the roads of such portions of the country as do not give promise of a sufficient profit to attract private enterprise. Here an expenditure is demanded in the interest of the commonwealth as a whole.”<sup>1</sup>

It is usually made to the detriment of industry and local interests. In Europe we find very little of that work of the railways so familiar to us in the opening up of new country and the creating of new traffic. England, in its geographical isolation and political compactness, did not need the railways for the purpose of government. They were born of the needs of industry and the public, and to *them* they were consecrated. The problem for the government was how to make the railroads more useful in these directions. The first plan was to give them free play.

If the policy of England was consciously that of allowing freedom of construction and expansion to

<sup>1</sup> For conflicting views on the proper relation between railways and the state, see Herbert Spencer, *Study of Sociology*, 4-7, 350 ff., and *passim*. Also his essay *Man vs. State*. Also Henry C. Adams. “Relation of State to Industrial Action” in *Publications American Economic Association*, vol. i., p. 8.

the roads, and if, as compared with the experience of Continental Europe, practical freedom was left, yet the nature of the English people, and the conservatism of their government, prevented anything like the absolute freedom of construction and competition that reigned so long supreme in the United States. The first restraint came from the difficulty of acquiring land. While anybody had a right to build a railway on his own land to operate it, the formalities incident to registration and legalization brought the restraining influence of the government into play. It was necessary to get from Parliament the right of eminent domain and the right of way over the public highways. In the nature of things this could not be got until the road had the sanction of Parliament, for eminent domain is a right peculiar to railway corporations. To get Parliamentary sanction was a process that discouraged many a would-be pioneer. If the bill met any opposition, it was referred to a Select Committee of each House. It was rare indeed that a bill should go through without opposition, especially in the early days. The first period of English railway history, from 1824 to 1840, was one in which every railway venture was looked upon with suspicion. It was only during the second period, from 1840 to 1854, that the attitude of the government evolved from dilatory acquiescence to unlimited concession. Little that happened after 1854 was of importance in the formation of the railway system, for during this period the railway network of England was practically

created. In fact, the lines were for the most part laid down in 1845, and ten years more indicated the forms or arrangement of consolidation.<sup>1</sup> Opposition to a railway sanction bill was at this time not only inevitable, but important. It met the bill at every stage. In the hearing before the Select Committee, Parliamentary agents, counsel for the contending parties, sifted and re-sifted evidence. Arguments would be brought forward by owners of land, especially those of the gentry, from town councils, from rival railway and canal companies, and from combinations bent on blackmail.<sup>2</sup> As the general public was suspicious of all railway ventures, it was very difficult for roads possessing no real utility to prove that they were needed. Many a road which failed in the investigation would redeem itself by a judicious distribution of bribes. Before this test many a deserving company fell. Many an instance is recorded of railway bills which it cost from £80,000 to £450,000 to get passed in Parliament, where it came to a vote after the report of the Select Committees. When we add to the difficulty of getting a bill through Parliament, the fact that speculation does not seize the English community so quickly as it does the American, we shall see that the railways did not have so free a rein as in America.<sup>3</sup>

<sup>1</sup> J. Mavor, *Q. J. E.*, April, 1894; Hadley, 158.

<sup>2</sup> Hadley, 164.

<sup>3</sup> Lalor's *Encyclopædia*, s. v., *Lobby*. Edward Bates Dorsey, *American and English Railways Compared*, 3. For extreme examples of slowness, see Acworth, *Railways of England*. For exorbitant prices for land, see Findlay, 222.

Yet competition did exist in England, and useless roads were built, as the following extracts will show. The *Athenæum* wrote in May, 1843, as follows:

“With a view to the future, let us glance at the facts as they now stare us in the face. Two railways in the vicinity of London, the Northern and Eastern and the Eastern Counties,—to Cambridge and to Colchester,—are carried into the same district. Both are unsuccessful ; one of the two is useless : total loss £120,000. Next, to the westward, it is plain that one line should have served for the Great Western and the South-Western, as far as Basingstoke and Reading : loss £200,000. Northward, we have two lines parallel with each other, the Birmingham and Derby and the Midland Counties. The latters hould never have existed : total loss £120,000. Then the Chester and Crewe, the Newton and Crewe, the Manchester and Crewe, the Chester and Birkenhead, three of them unprofitable : total loss, without any advantage, £300,000. Then the Manchester and Preston, the Newton and Preston, the Leigh and Bolton, serve the same district : unnecessary cost £100,000. The Manchester and Leeds and the Manchester and Sheffield exist as separate railways ; loss £300,000. Thus might good legislation have rendered the country two essential services. The whole traffic at present existing might have been concentrated on the remaining lines by a judicious selection, so that they would have been rendered more profitable to the country which they serve, while these six million pounds might have remained for investment. With this money at its disposal, our government might have had the following lines for conveyance of mails, which it eminently wants, namely, a mail line from Exeter to Plymouth, and its continuation for the same

purpose to Falmouth ; and a mail line to Ireland by the way of Chester and Holyhead and a mail line north to Scotland. These great lines would have been feeders to those which already exist, would have conferred great benefits on the country, and would have cost no more than has already been paid for partial communication.”<sup>1</sup>

The system here described is one of disconnected short roads. The consolidation of the roads was looked upon with suspicion. Competition was what the government wanted, but it would like it and some arrangements for through traffic also. It was still necessary for goods to be transhipped and for passengers to buy separate tickets when travelling any distance. We shall see that in bringing about joint rates, in consolidating the disconnected system, and in preventing ruinous competition, the railway companies themselves proved more efficient than the government. This will be shown when we examine the Railway Clearing-House and its work. The following quotation will show that the government got the full effects of competition :

“ In 1862, the year of the great exhibition, the third-class return fare from Leeds to London came down to five shillings. (To-day single fare is about a pound). The following year an attempt was made to amalgamate this road with the Midland, but Parliament refused its consent.”

Under these circumstances new roads were allowed to be built, with what justification is shown by the

<sup>1</sup> Quoted in Acworth, *Railways of England*, 7.

fact that one of them had its rolling stock seized for debt, a process which was promptly declared illegal by Parliament, lest, perhaps, such a policy might make competition less furious.

"In 1866 the war broke out again. A man could book from York to London, first class, five shillings, second 'class, two shillings sixpence—about one seventh present fare. This time the intermediate stations took part in the war. The fare from Peterborough was, for first class, two shillings, for second class one shilling. In 1862 the fare from Lancashire to London had been two shillings sixpence throughout the summer. Even as late as 1871 the Midland was compelled to carry coal from South Yorkshire to London at one third the normal price."<sup>1</sup>

The above quotations, I believe, show both the need of intelligent government control and the absence of it. Mavor has said that the English railway regulation was from its beginning one of limited ownership and controlled administration. That this was true of anything but the reservation of the power of the government to fix maximum rates seems to me incapable of demonstration. Even this reservation has been called into question as not at first intended by the government. It has only recently become important. I prefer, therefore, to interpret Mavor's dictum that the course of railway regulation by the government has been one of progressive intensification of control as meaning that the progressive started from approximate absence of control. I propose to trace the course of

<sup>1</sup> Acworth, 195, 386.

regulation with the purpose of showing how much of it has been effective and how much the railroads have done for themselves.

A phase of government regulation particularly instructive to us is the development of the Railway Clearing-House.<sup>1</sup> This organization had, before 1873, settled some of the most perplexing questions of railway management. It was the invention of a railway man, a Mr. Morison, who later became a member of Parliament. In 1842, when he was audit clerk for the London and Birmingham, no adequate arrangements existed for the division of traffic, the assignment for the payment of through rates, or any arrangement for proper handling of through traffic. When roads began to run in connection with each other, the necessity of buying separate tickets, of transhipping, and re-invoicing freight, became intolerable. The companies had different modes of keeping their accounts, and as no one had authority to impose uniformity, there were difficulties in agreeing, figures which caused continual recriminations, and charges of unfair practice. The roads were unable to work together, and the public suffered. The idea now was to establish

<sup>1</sup> Hadley refers, 159 n., to *Report of Evidence before Joint Select Committee*, 1872, Appendix, 839-945, as best account of Railway Clearing-House. Not having access to this, I have used *The Railway Clearing-House*, Edward McDermott, F.S.S., pamphlet republished from *Railway News and Joint Stock Journal*, 1889; also *Leisure Hour*, vol. xviii., 223, 224, vol. xxii., 477, 478. This magazine contains a serial discussion of English Railways. The Clearing-House is described in No. 12. The series begins vol. xviii., 356. year 1873.

a central office somewhat upon the lines of the Bankers' Clearing-House, an institution which had then been established more than half a century. This office should receive the returns of through traffic from all the companies, impartially make the apportionments and declare the balance due to each. Number takers were to be stationed day and night at the junctions to record the movement of trains, so that the system works accurately and without friction. The lead in the movement was taken by George Carr Glyn, Chairman of the London and North-Western. When it was founded in 1842 it employed only four clerks, and superintended the traffic of four railways, unconsolidated ones at that. In 1891 it was caring for all the railway companies in Great Britain, having in the aggregate nearly 17,000 miles of railway. In 1890 the number of traffic settlements made was 9,542,000. The value of the receipts dealt with was nearly £20,000,000, through traffic over different roads, be it remembered. In 1850 it had already attained such importance and usefulness that it was incorporated, and an Act of Parliament passed defining its powers and clothing it with greater responsibility. The arrangement proved so beneficial that it was perfected in 1859 by the passage of the "Railway Companies' Arbitration Act," the purpose of which was to prevent useless and expensive litigation. It was provided that any two or more companies might, by writing under their common seal, agree to arbitrate any differences in which they were mutually concerned and which they might legally agree to settle

among themselves. The arbitrators were to have power to call for the production of books and documents, to administer oaths and hear evidence, their decisions to be final and enforceable in any Superior Court of Law. By these arrangements such an *esprit de corps* has been created that unfair and secret-rate agreements are unheard of. The Clearing-House has made possible the monthly rate-making conferences where nothing binds but honor, and that most effectively.<sup>1</sup>

Thus the railways, left almost to themselves, between 1854 and 1873, forestalled the government in the consolidation of the roads, perfecting through rates, avoiding competition, and adopting uniform accounts. The monthly conferences have done away with the necessity of discrimination. Sir Thomas Farrer, speaking officially for the Board of Trade in 1872, said: "One sees that there are all sorts of suspicions of unfair favor on the part of the traders, but in almost every case there is good reason for what is done."<sup>2</sup> All these questions were settled by the working of the interest of the railway companies themselves.<sup>3</sup> It might be shown in a very interesting manner that the honor

<sup>1</sup> Aldace F. Walker, *Railway Associations*, 4, 5; Acworth, *Railways of England*, 138; Hadley, 159; Lalor's *Encyclopædia*, s. v., Clearing-House end of article; Findlay, 207, 210, 213, 214; Hadley, 159. Acworth gives striking examples of the influence of the conferences. There are ninety-three roads in England and Scotland.

<sup>2</sup> Quoted in Acworth, *The Railways and the Traders*.

<sup>3</sup> Ideal competition seems to exist between the London and North-Western and the Midland, parallel lines from London to Liverpool.

agreements of the companies, far from depriving the public of the advantages of competition, protect them from its disadvantages, and enable the roads to compete fairly. Mavor points out that the only questions left for discussion after 1872 were, from 1872 to 1873, that of undue preference; after 1880, a differential mileage rate, or the long- and short-haul question; and since 1888, exorbitant rates, with differential rates as a subordinate question. The first of these questions was settled by the acquittal of the roads; the second is as difficult for the roads as for the government, being in some sort an ethical and political one; the third the government has attempted to settle, at great expense, and after all failed to do in three years what popular indignation did in a month.<sup>1</sup> It will be shown, when we come to the attempts at government control of rates, that they would better be left to the roads and the traders. In the work of self-regulation the companies have no doubt been aided and stimulated by the discussions of Parliament, but the motive of their best work will be found in the working out of their self-interest and their public spirit.

The above account of the work of the railways in regulating their own affairs sets forth the course of the companies as if they were acting without restraint. Admittedly the influence of political affairs and the attitude of the government were important in shaping this course. I believe, however, that very little departure from the truth has been made in simplifying this account, and this will be remedied

<sup>1</sup> See Mavor, *Q. J. E.*, vol. viii., April, 1894.

by an exposition of the conduct of the government.

We have seen the repressive influence of the difficulty and expense of getting a charter for a railway. In the charter the state reserved, besides certain rights of inspection to the Board of Trade, the right of Parliament to fix the maximum rates and to prevent a dividend exceeding ten per cent. The difficulty lay in providing machinery to enforce these reservations.<sup>1</sup> In 1840 powers were given to the Board of Trade not unlike those exercised by the Massachusetts Commission. Neither this body nor the permanent Select Committee on Railways could prevent the roads from dividing enormous profits in large salaries. The idea of a railway commission had been held in England for many years. The jealousy of Parliament to any coördinate power and the desire of retaining regulation by its Board of Trade prevented the realization of the idea. So, in 1842, the powers of the Board of Trade were further defined, and until 1844 it divided the surveillance of railways with the Select Committees of the two Houses. In 1844 the Select Committee of the House of Commons proposed the appointment of a permanent special commission, to act as a committee to investigate applications for charters. This commission worked for about a year.<sup>2</sup> During this year the country experienced a railroad mania that was never repeated, and it began to be felt that the railways deserved much more attention, not only than Parliament had given them, but than it had

<sup>1</sup> Hadley, 171.

<sup>2</sup> *Ibid.*, 158.

reserved to itself the right to give to them. In 1844, the Select Committee of the Commons, of which Mr. Gladstone was Chairman, had got Parliament to adopt a resolution that all railway bills,—that is, charters,—which should come before Parliament contain a clause providing that nothing in the charter should exempt the railway from the provisions of any general act which might be passed during that or any future session of Parliament. This resolution was adopted in anticipation of the general law passed in 1845. This general railway law covered those matters the regulation of which could be provided for at that time by a law of general application. It provided for the condemning of lands, specified rules for operating the roads, fencing the roadways, and dealing with public highways. The commission of 1844 was revived without any new powers. It lasted until 1852, making an elaborate report to Parliament. No new legislation resulted and no new restraint was placed upon the roads. But in 1845 Mr. Gladstone was appointed President of the Board of Trade. He had proved himself devoted to progress in railway matters as member of the Select Committee of the Commons. He had proposed, as chairman of that committee, that a permanent commission be established to arbitrate railway disputes. As the position to which he was now appointed was a Cabinet post, much was expected of him. He immediately carried through his first Cheap Trains Act.<sup>1</sup> It provided for "Parliamentary," or third-class accommodation trains, that they

<sup>1</sup> Acworth, *Railways of England*, 196; Hansard, lxxiii., 519;

should be run over the lines of the companies at least once each day in each direction, and that they should stop at every station. In exacting this concession, Mr. Gladstone had popular opinion behind him. In 1846 legislation was proposed providing means to prevent companies from buying off canal competition and destroying the canals. The public was opposed to steps by the railways which should destroy production, yet was intensely wrought up over the results that actual competition was working. Pamphlets were actively circulated. In one of these, an open letter,<sup>1</sup> addressed to the Chairman of the London and North-Western Railway, a plea was made for the establishment of a Railway Board. It was not desired that this board should have absolute power to enforce its decrees. That would not be tolerated, nor was it necessary for public protection. It should have power merely to recommend arrangements calculated to increase convenience and extend the accommodation of the public. It should be its duty to suggest the use of the best machinery known, to suggest increasing of speed and reduction of rates. It should have power to compel the roads to refer to arbitration any question upon which they and the Railway Board disagreed. In order to prevent competition "joint-purse" agreements might be adopted.<sup>2</sup> The present writer

Sterne, 5; The Act, *Patterson's Practical Statutes* for 1844; Findlay, 241; Acworth, *Railways of England*, 35, 53, 355; Sterne, 6.

<sup>1</sup> By George Carr Glyn, former President L. and N.-W., founder of the Railway Clearing-House.

<sup>2</sup> "Railway Competition," a letter to George Carr Glyn, Esq., M.P., London, 1849, 16, 23.

believes that this was wise counsel. It was the proposal of a commission such as Massachusetts adopted with such good results twenty years later. If this advice had been followed, the evils from which England suffered until 1870, when the railways had perfected their own organization, would have been settled twenty years earlier. Such is the value of the counsel of one wise man. The public had little for which to thank the government. This counsel was not acted upon. It took its place with all the other influences which were, within a few years, to produce England's first important piece of railway legislation. The elaborate report, in 1849, of the Select Committee of the Commons, dwelt on means of protecting investors in railway building from having their capital diverted to other objects. This report brought out clearly the need of that important legislation toward which forces had been working for ten years. In 1854 this Committee, of which Mr. Gladstone and Mr. Cardwell were the most active members, got through Parliament the Railway and Canal Traffic Act of 1854.

This act, called the Cardwell Act, is for many reasons the most important piece of legislation to which England and America have ever been subjected. It made the first declaration of the common law as to railway carriers. It gave the color to all subsequent English legislation. It failed to provide for the commission for which Mr. Gladstone and Mr. Cardwell had wished. Amended in this and other respects, it was supplemented by the Regulation of Railways Act of 1873. This act was

incorporated with the Railway and Canal Traffic Act of 1888, and is thus the basis of the commission system in England. We shall find, later, that the Cardwell Act of 1854 is the basis of both American railway law and American railway legislation. Such is the legislator's tendency to copy. We shall thus be repaid for considering thoroughly the Cardwell Act of 1854.<sup>1</sup>

Common carriers were the particular object of its provisions. They were defined as railways, stations, canals, wharves, and termini used in public traffic, and the owners and lessees thereof, or any contractor working railway or canal navigation carried on under the powers of any Act of Parliament. They were ordered to make arrangements for receiving traffic and forwarding it without unreasonable delay. In case of failure to do this parties injured might appeal to the courts. Discrimination was forbidden against individuals and between railways demanding through traffic agreements.<sup>2</sup>

These regulations have remained the basis of railway legislation. Yet at first they amounted to little more than a declaration of the law. No adequate machinery was provided for carrying it out.<sup>3</sup> Such questions always had been within the province of

<sup>1</sup> Acworth, in Mr. Cain's *Compendium*, 267, 268; see the Act, *Railway and Canal Traffic Act*, 1854, 17, 18, Victoria, c. 31; Patterson's *Practical Statutes*; Dabney, *Public Regulation of Railways*, 179; Sterne, *Report*, 9.

<sup>2</sup> Dabney, 178.

<sup>3</sup> Patterson, *Statutes*, 1873, 57; *Statutes at Large*, U. K., vol. xxii., c. xxxi., 72; Sterne, *Report*, 8; Hadley, 169, 170.

the Board of Trade. It was supposed that disputes arising under the act should be decided by that body, and in the original draft it was so provided. The railways brought all their influence to bear upon the Commons, and succeeded in having an amendment adopted giving jurisdiction over railway disputes to the Court of Common Pleas. The justices of this court disclaimed any capacity for the work. It entertained several complaints of undue preference and granted injunctions, but when pressed for an opinion the court soon found that it had no means of determining whether preference was undue or not. In this way were matters allowed to drift. Special laws were passed in abundance. In 1865 a Royal Commission was appointed to investigate. It reported in 1867:

“Three thousand statutes have been passed,” it said, “defining and regulating the powers of the railway companies of Great Britain. Consequently the rights of the public are scattered throughout all these acts. The existing machinery for the regulation of railways is useless.”<sup>1</sup>

During the period, then, from 1854 to 1873, the railroads were practically left to themselves. Guided by their own interest they had, as we have seen, completed the consolidation of the railway system, done away with competition, and adopted a uniform system for accounting between themselves. Both the commission of 1867 and the committee of 1872 acquitted the roads of undue preference.<sup>2</sup> In the

<sup>1</sup> Quoted in Mass. R. R. Commission, *1st Report*, 1870, 44.

<sup>2</sup> See quotation in Acworth, *Railways of England*, 95-100.

same period the government had made gross mistakes of judgment; the machinery it constructed for regulation was, on the whole, either useless or inefficient and clumsy, and at the end of the period the government found itself in more serious need of regulation than the railways. How the two systems compared in their effect on the roads after 1871, when the permanent commission was established, we shall see in the succeeding paragraphs; but we must remember that by 1873 the formative period had closed. We shall understand why the companies did so well if we remember the sort of men that guided the self-interest of the companies. Among the men who acted as presidents of railway companies were Lord Chandos, the Duke of Buckingham, General Anson, Sir George Carr Glyn, Admiral Moorson, Sir Richard Moon, Sir Daniel Gooch, and Lord Salisbury. More important in the regulation during this critical period than decree or statute was sensitiveness to public opinion, and to public needs, and to public spirit. We shall now ask what effect these had in settling the questions remaining unsettled after 1870.

They were well defined. The principle of combination had at last been accepted by the government as not only inevitable but, on the whole, unobjectionable.<sup>1</sup> The question of undue preference was settled between 1872 and 1873. The engrossing question from that time till 1880 was that of differential mileage rates, the long and short-haul question. The railways had regulated

<sup>1</sup> Sterne, *Report*, 12.

matters so that they themselves should not suffer from competition; now each trader and each district whose industry was affected by railway rates wished to adopt the railway policy to its own needs. While the Londoners wanted low rates on American cereals and mutton, the farmers wanted protection. Here was work for a commission with power of arbitration. All the provisions of the Act of 1873 centred on the commission appointed by it. After seven years of the system this question dropped into subordinate importance, while the public was exercised over the question of exorbitant rates and the simplification of classification.<sup>1</sup> This, then, was the work to which the permanent commissions provided for by the Act of 1873 and the Act of 1888 were called. Let us consider, first, the Act of 1873.

The Act applied the Act of 1854 to the commission system. A Commission of three was appointed to last five years. They were to receive a salary of £3000 each, and were to be assisted by two assistant commissioners at a salary of £1500, and to hold office during good behavior. One of the Commissioners must be a man of experience in railway management, another must be a lawyer. Pursuant to this provision, James McNamara, Henry Tyrwhitt, and Sir Frederick Peel were appointed. To this Commission was transferred all the power vested by the Cardwell Act in the Court of Common Pleas and by the Railway Clauses Act of 1863 in the Board of Trade. But these powers were much expanded. The Commission was to decide whether a

<sup>1</sup> Mavor, *Q. J. E.*, April, 1894.

through rate was reasonable, and in cases of dispute to fix terminal charges. Disputes between two rival companies might be brought before them, as well as those between the railways and other companies. Any dispute whatsoever to which a railway was a party might be brought to them for decision. Municipal authorities were given a status before them, and they were to decide between the government and the companies in dispute over remuneration for carrying the mail. They were to sanction or prohibit all agreements between railway companies, and might even issue general orders. They were to order railway companies keeping canals closed to avoid water competition to desist, they were to order the publication of rates. To perform these functions the Commissioners might sit as a court, make investigations, hear evidence, administer oaths, and require the production of books and witnesses. To prevent abuse of the right of appeal, the decision of the Commission was to be, with slight limitations, final. An annual report was to be made to the Queen and to Parliament.<sup>1</sup>

These powers, apparently so wide, suffered the following limitations at the outset: First, the railway companies were by their charters empowered to make any charges under a fixed maximum. Second, the burden of proving that a rate unnecessary and

<sup>1</sup> The Act of 1873, Patterson's *Practical Statutes for 1873*, 56 *ff.*, or *Public General Statutes, 1873*, 238 *ff.*; (1) see "The Toll and Maximum Rate Clauses in the Railway Acts," given in Grierson, Appendix, lxv.; (2) Findlay, 229; (3) *Ibid.*, 224; Acworth, *The Railways and the Traders*, 176; Hadley, 155, 156; Sterne, *Report*, 12.

preferential was upon the complainant or the Commission. The burden was placed upon the roads by the Act of 1888. Third, in deciding this, the Commission was balked by their inability to find out what profits the roads were making. The English railway companies have never made annual returns. Although the Board of Trade has always had power to call for various statistical reports, the system of returns has never been adopted. The roads could very honestly plead unreadiness. They have always kept unready, and much complaint has been made of the secrecy of their accounts. They have never furnished those statistics which a Commission might use against them in the interest of the public. Finally, appeal was easy, and finality of the Commission's finding could be thus evaded. By writ of mandamus from a court of appeal the Commission could be compelled to state a case. This could be made the subject of an action in the higher court. The case would thus be taken out of the hands of the Commission.<sup>1</sup>

This Commission justified its existence. At the expiration of the first period of five years its term was extended, and the system practically made permanent. Yet authorities have differed on the value of its work. In July, 1882, a Select Committee for the investigation of rates and fares reported that they found no reason for reversing the legislation of 1873 and returning to the purely legal tribunal, which, as the Court of Common Pleas, was abandoned in that year as a failure.<sup>2</sup> Simon Sterne

<sup>1</sup> Hadley, 155, 156.

<sup>2</sup> Quoted in Sterne, 15.

concluded from his investigation in 1886 that the work of the Commission was satisfactory. Adams said that the very existence of the Commission prevented the causes of disputes from arising.<sup>1</sup> It was suggested, however, that the unequal footing of the parties prevented disputes even where there was sufficient cause for complaint. It is evident that something was at work to prevent disputes from being broached by the public.<sup>2</sup> In 1886, eleven out of the twelve cases instituted were brought by one railway company against another; in 1887, six out of twelve. Hadley, who is inclined to look on the work of the Commission from the dark side, admits that the existence of such a power constitutes a check on arbitrary action in general. The Commission, he says, was not a total failure. The Select Committee of 1882 recommended that the jurisdiction of the Commission be extended. Adams, Sterne, and Hadley thought that what the Commission system needed was revising both as to powers and as to formation.<sup>3</sup>

This revision came in the Act of 1888. Its object was to give the public more consideration, (1) in the making of the rates, (2) in their publication, (3) in disputes arising concerning them. The Acts of 1854 and 1873 were confirmed and, with certain amendments, were incorporated with the new provisions, under the title of the Railway and Canal Traffic Act of 1888. The most urgent reasons for this Act were not that rates were too high, but that people thought they were, and could not understand

<sup>1</sup> Adams, 93.

<sup>2</sup> Mavor, 293.

<sup>3</sup> Hadley, 173-176.

the principles on which they were laid. It was a contest of the traders against the railways.<sup>1</sup> The traders wanted publicity and a chance to discuss the rates. The classification had become unintelligible. The Clearing-House classification had grown by accretion until it reached four thousand items. The rates had multiplied until they had become hundreds of millions. The traders wished this simplified, and they wished to be represented in the framing of the new schedules. They won a victory. The Act of 1888 intrusted the Board of Trade with the formulation of a thorough-going revision alike of classification and of rates. It provided (1) that every railway company should submit to the Board of Trade within six months after the passing of the Act a revised classification of merchandise traffic and a revised schedule of maximum rates for each specified class. These rates were to be put to the following test: First, they were discussed in public sittings of the Board of Trade, where all objections and arguments were to be presented. Second, the Board of Trade would come to an agreement with the railways, and the result, embodied in a "Provisional Order Bill," would be presented to Parliament. Third, where the Board of Trade and the railways had disagreed, Parliament would make an adjustment. The final schedule would be promulgated as an Act of Parliament.

(2) The essential difficulty of the long- and short-haul question was decided by a prohibition of

<sup>1</sup> Sir Thomas Farrer in Acworth, *The Railways and the Traders*, 1898.

different rates for domestic and foreign commodities.

(3) The burden of proving that charges are reasonable and not discriminating is placed upon the railway.

(4) Town councils, chambers of commerce, almost every constituted body, may take advantage of the foregoing provision; being given, on application, the status of plaintiff to the Railway Commission.

(5) This body was reconstituted, so as to consist of two appointed members and three *ex officio* members alternating in service. One of the appointed members was to be experienced in railway affairs. The three *ex officio* members were to be justices of the Superior Courts of England, Scotland, and Wales. They were to act as presiding officers, each in those cases only which were heard in the part of the Kingdom for which he was nominated.<sup>1</sup>

Against this Act the companies protested as long as protest was of avail. They have now come to accept it under the protest that it puts the power to make rates into the hands of men not capable of judging their effect.<sup>2</sup> The government, they say, has departed from its principle of interfering with nothing but the maximum rates. As to this point two of the Commissioners differ. Mr. Justice Wills thinks that the Commission has no power to fix the rate, but only to order the company to desist from charging a preferential or unreasonable rate. Sir Frederick Peel thinks that the Commission has

<sup>1</sup> The Act of 1888, Patterson's *Statutes and Public General Statutes*.

<sup>2</sup> Findlay, 229, 230.

power, not only to say that the rate is preferential or excessive, but to fix the reduced rate.<sup>1</sup> Against this interpretation the roads protested vigorously, and when protest failed resorted to strategy. The government's privilege of fixing maximum rates had been of no importance.<sup>2</sup> The Committee of 1882 said that freight rates were considerably below the maxima. When the new schedules had been embodied in a Provisional Order Bill, and after three years of close discussion became a law, the rates agreed upon were declared satisfactory. But the roads promptly ran the rates up to the maxima, and the work of the new schedule was in vain. Nor was it a law or judicial procedure that protected the public against the arbitrary act. A change of maxima by the new method would hardly afford speedy relief. The honorableness of such action on the part of the government, if not its consistency, might be questioned.<sup>3</sup> One phase of the attempt would be sure, namely, the expense. The government did not get around to action. As a consequence, publicity, left to itself, showed its power. Nor were the representations of the traders and the protest of Parliament alone sufficient. The traders withheld payment of their accounts, showing, by the fact that the roads promptly returned to the rates of 1892, that in cases of injustice there is not such a great inequality between the railways and

<sup>1</sup> *Saturday Review*, vol. lxxx., 537, October, 1895.

<sup>2</sup> Findlay, 230. Joint Select Committee *Report on Provisional Order*, 2 vols., 1800 pages, sat from April 4 to July 14, 1891.

<sup>3</sup> Mavor, 402.

the traders,—if public opinion is but left to furnish the *esprit de corps*.

We have at last arrived at the intensified control, the course toward which we proposed to trace. Before asking ourselves how much of this intensified control is worth while, let us see how others call its value into question. A recent article in the *Saturday Review* contains the following:

“ The Commission sat in 1889 on fifteen days, in 1891 on twenty-eight days, in 1892 on twenty-two days, or, on an average, twenty-three days a year. According to their own reports, the Commission heard, in the first year of their existence eleven cases, in the second year twenty-eight cases, in the third nineteen cases, and in the fourth year seventeen cases, or, on an average, eighteen cases a year. The salary of the Commissioners is £3000 a year, or more than £28 17 s. an hour. Each sitting of this Commission, thinks Sir Albert Rollit, costs the public from £400 to £800. It is now seriously doubted that it is worth the money.”<sup>1</sup>

It is obvious that this argument does not even touch the merits of the Commission system. That the objection of much expense and no work is a danger peculiar to the English situation is made evident from another objection that is often heard. The advocates of the Act of 1873 looked forward to an energetic and experienced Commission. In England, however, when a good salary is attached to an office, the appointee is very likely to be a member of one of the old families. It was provided in 1873

<sup>1</sup> *Saturday Review*, vol. lxxx., 537, October, 1895.

that one of the three members should have experience in railway matters, another be a lawyer. By the Act of 1888 the legal member was replaced by a justice of the High Court of England, Scotland, and Wales, as the Commission might be sitting in one or the other of these places. The railway man of this Commission was Mr. Price, a manager of wide experience. The third member was Sir Frederick Peel, long a member of the old Commission, but not a man of practical experience. He had been the third, or inexperienced, member of the old Commission and the new. In 1891 Mr. Price died. His place was filled by the appointment of Lord Cobham, a man whose chief recommendation was his ancestry. The Commission, as then constituted for England, was as follows: Chairman, Mr. Justice Wills; Sir Frederick Peel, and Lord Cobham; no one of whom has the least practical knowledge of railways, far from possessing a capacity for performing one of the most useful functions that is open to a Commission, namely, the introduction of economies. The performance of such work is absent from the record of government regulation in England.

The experience of England reminds us upon what regulation in an Anglo-Saxon democracy should rest. The industry should be allowed to develop untrammelled by government interference. The exception to this is the reckless granting of rights and privileges. Government regulation should be limited to protecting the public against abuse of privileges and immunities granted by the government. Efforts to make the service more useful to

the public should be limited to recommendations and demonstration of the fact that the interest of quasi-public servants is in the long run that of the public. They should appeal to the higher sentiments of citizenship, civic pride, honor, love achievement and patriotism. These sentiments lie deep in the Anglo-Saxon breast. They should not be discouraged, but cherished. The public should praise them. Their deeds, good and bad, should be given to the community. In the narrow sense, and for the moment, publicity may seem a less effective regulation than repression and government; but it is upon publicity that a democracy should rest, and, in the long run, and under intelligent guidance, individual effort will bring rewards to the public for its confidence and guarantee of freedom enormous by comparison. Such in a democracy is the power of one good man. Let us see what America has lost by distrust and interference, and gained by faith in the ultimate good of individual initiative, and public honesty, and the power of publicity.

## CHAPTER VIII

### RAILWAY REGULATION IN THE UNITED STATES

IN its broad essentials the experience of the United States has had very much in common with that of England. The course of government regulation in England was one of "a progressive intensification of control." America has followed in this course, but, in most stages, several years behind. It is in this position that she finds herself to-day. England has settled most of the questions which in the United States are still vexing the public. In England the roads are compacted into a solid system, with associate management, and perfect accordance as to great policies. There are now only about ninety-three roads in England and Scotland.<sup>1</sup> We need not consider the concentration of railway control in France under six great companies. The case of England more nearly approaches American conditions, and the comparison is more useful. In America, then, although the process of amalgamation and combination has been a marked feature of the recent railway situation, the 150,000 miles of railway is now operated by nearly 625 corporations, and owned by nearly 1500 companies. In England competition and discrimination are a thing of the

<sup>1</sup> Findlay, 213, 214.

past. At the present time there is practically no part of the United States in which competition does not exist between organically independent carriers, and although there has been, since shortly after 1870, a system of State Railway Commissions, supplemented since 1887 by the Interstate Commerce Commission, discrimination is a common complaint.<sup>1</sup> Thus the United States, with a formidable set of Commissions, and an equally formidable code of railway law, has failed to work out those problems of regulation and management which in England the railways worked out between 1854 and 1873, and when left almost entirely to themselves.<sup>2</sup> The reasons for this difference will throw light upon the questions which it is the task of this paper to answer, namely: (1) "Should there be a system of Railway Commissions in the United States? and if so, (2) What should be its powers?" The reasons are: first, that no restraint was placed upon the building of railways; second, when the need of preventive regulation was felt, the government resorted not to preventive, but to corrective legislation; and, third, that this legislation was of such a nature as prevented the roads from carrying it out, and made it impossible for them to work out the railway problems unaided, as the English roads had done. Many writers on the railway question

<sup>1</sup> Aldace F. Walker, *Railway Associations*, 1.

<sup>2</sup> James M. Bonham, *Railway Secrecy and Trusts*, "Questions of the Day," 1890, 127; Hudson, *Railways and the Republic*; George H. Lewis, *National Consolidation of the Railways of the United States*.

do not accept these reasons, nor do they accept the conclusions drawn from them. These writers have popular opinion on their side. The reasoning will be put forward for what it is worth.

It would have been well if, at the beginning of railway construction in the United States, there could have been some superior intellect to plan an ideal network. In Europe, the problem did, in fact, present itself almost at the outset, and could be dealt with by one compact, highly centralized government. But in the United States it was the affair of from twenty-five to forty-five lusty commonwealths. At the beginning there was no problem. The railways made problems, by opening up new country, creating new traffic for competition, and weaving out a system of interstate communication, which was one of the great blessings which the railways conferred upon the nation. The railroad question had developed with the country. It has been made difficult by all the complications that territorial expansion, rapid changes of economic and political conditions, and federation in government can bring to a public question. When we remember these difficulties, and are mindful of the great good that has come from individual enterprise in railway construction, we can be grateful to the last generation of legislators, not only for not restraining the railways but for encouraging them. Their control has proved on the whole not inadequate, and, as compared with some recent attempts, ample.

The history of this control divides itself into four periods. The first came to a close about 1830; the

second was from 1830 to 1850; the third from 1850 to 1870; the fourth has not yet ended. The first period was marked by an appreciation of the need of public highways and an abundance of projects for internal improvements.<sup>1</sup> By 1831 the locomotive stood forth, of all means of communication, as the one that had come to stay. The second period was characterized by the activity of the several States in internal improvements. According to a strict construction of the Constitution, the Federal Government did not possess power to engage in internal improvements. The development of both railways and canals was, during this period, the work of the States. The third period was that in which internal improvements were left to private enterprise. By 1850 reliance upon canals had been abandoned. The most important instrument of national expansion and consolidation was the railways. To them was applied the theory that the public might safely rely upon competition to guarantee fair treatment and fair prices. The great fear was that there should not be a sufficient number of roads constructed.<sup>2</sup> During this period were scattered the seeds of the railway problem. The fourth period has been stamped, it seems, indelibly, with the impress of this problem and attempts of the government to solve it by government control. It is the wisdom of some of these attempts, the causes of the failure of others, and the value of different methods that we wish to consider. We may begin by

<sup>1</sup> Henry Adams, Introduction to *Dixon's State Control*.

<sup>2</sup> Louis Paul-Dubois, *Les Chemins de Fer aux États Unis*.

substantiating the first reason for the existence of many railway questions yet unsolved.

What Prince Metternich once said to George Ticknor on the subject of repudiation by the States, in reproach, of course, of our democratic institutions, well expresses the nature of railway development before 1870: "You must first suffer from an evil before you can apply the remedy. You have no preventive legislation."<sup>1</sup> In the matter in question he was surely correct. In all Western Europe, even in countries where the government did not assume the direction of the roads, restraint arose out of the very needs of the government. This is seen in the enactment of general railway laws. It was Austria, the most conservative country in Western Europe, that, in 1838, enacted the first law for restraint and uniformity in railway building.<sup>2</sup> It provides (1) for a detailed form of application for charter, (2) for limitations to charters, (3) for a monopoly of territory during the period of charter, (4) for publicity in rates, and (5) for their reduction when profits should exceed fifteen per cent.<sup>3</sup> Next in order came Prussia, a few months later, with a law of somewhat similar provisions. The first that England had resembling a general railway law was the charter proviso of 1845. That looked forward to restraint, but did not provide any. Yet in England restraint already existed—in the cost and difficulty in getting a charter, the necessity of purchasing

<sup>1</sup> *Life, Letters, and Journal of George Ticknor*, edited by George S. Hilliard, vol. ii., 175.

<sup>2</sup> Hadley, 209.

<sup>3</sup> Sterne, 29; Jeans, 79.

land at arbitrary prices, the fear of accidents, and the distrust of the public.<sup>1</sup> In America, on the other hand, far from any conservatism being felt, the policy of the government was to encourage construction to the uttermost. Up to 1848 no general railway legislation was even thought of. In that year the first general railroad law in the United States was made by Michigan. Illinois followed in 1849, Ohio in 1854.<sup>2</sup> The laws made by the States at this time did not provide restraint. The object was to free the State from all connection with railway enterprise that should involve responsibility. To this end some States went so far as to revise their constitutions, incorporating in them a clause inhibiting the State from all future connection with railroad building or other schemes of internal improvement.<sup>3</sup> This step gave individual initiative more freedom. The enactment of general railway laws only increased it. While the States were engaged in internal improvements and put their money into railways, they granted charters by special enactments. Now no legislative check whatever was placed upon granting of charters. A number of States went so far as to provide in their constitutions against the combination of competing lines. In the West, as we should expect, the legislatures granted concessions with a free hand, and, with the Dartmouth College case staring them in

<sup>1</sup> On the fear of accidents see Francis, *History of English Railways*, 2 vols. Quoted in Clark, *Am. Ec. Ass'n*, vol. vi., 495.

<sup>2</sup> Clark, 12, quoting Cooley; *Ibid.*, 14.

<sup>3</sup> Lalor's *Encyc.*, article "Repudiation"; Clark 14 and 21.

the face, many rights which they have since been desirous of restricting. Even conservative Massachusetts, and so late as 1868, granted a charter authorizing the construction of a line parallel to a part of the Boston and Maine at an average distance of one mile from it, and in 1869 charters were granted for three roads from Taunton to Providence.<sup>1</sup> It was the agriculturists of the Northwest who first sounded the alarm, but only when the roads had it in their power, and were forced by necessity of self-preservation, to make and unmake cities, to destroy or build up the industry of individuals, and to force migrations of industry to the favored points. The railroads had done their work; the States could complain only of the disease they had themselves contracted.<sup>2</sup> This I have substantiated as the first reason for the existence of unsolved railway questions. The second was that the States did not understand the symptoms of the disease under which they were struggling. The legislation and restraints they applied were not curative, but punitive. Their effect has been to aggravate the evil. This I shall proceed to substantiate.

The evil in 1870 was that there were too many roads. All of these roads would run so long as they could pay expenses. In order by hook or crook to get traffic enough to do this they would make absurdly low rates at points where they must meet

<sup>1</sup> Clark, 17.

<sup>2</sup> Dixon, *State Railway Control*, 24, 42; G. H. Lewis, *National Consolidation*, 194; Paul-Dubois, *Les Chemins de Fer aux États Unis*, 154-197.

competition. To recover what was thus sacrificed they would make outrageously high rates at non-competing points. This was a simple measure of self-preservation. The conditions of railway construction made it necessary. The introduction of steel rails at this time made ineffective the competition which had heretofore been relied upon to regulate rates of charge. Discriminating rates were thus necessary and possible, and no enactment of Congress or the States could prevent the higher law of self-preservation from asserting itself in spite of all the machinery that could be devised. The evil was discrimination. This was made necessary by unjustifiable competition. The roads would have been able to stop this. It was to their interest to do so. The roads did it in England unaided. In America they would have done so, if, first, public opinion had suggested it and the government had not made it impossible by an unwise and unjustifiable freedom in granting concessions to useless competing lines.<sup>1</sup> Events have proved, and there are now many examples to illustrate, not only that this can be done by agreements between the roads, but that such agreements remove only the evils of competition and leave its advantages intact.<sup>2</sup> Even under the conditions of 1870, what this country needed was not lower rates. The introduction of

<sup>1</sup> Clark, 21. E. W. Meddaugh, "The Interstate Commerce Act, its Purposes, Partial Failure, and Reasons, with Suggestions for Improving It." *Publications Michigan Pol. Science Ass'n*, May, 1893; Hadley, *Q. J. E.*, iii., 175, January, 1889.

<sup>2</sup> *E. g.*, the ideal competition between the London and North-Western and the Midland.

steel rails had already sent rates down. It is to the interest of railway owners to keep rates low. What we needed was steady rates.<sup>1</sup> It was to the interest of the three parties interested in railway transportation that the rates should be steady, namely, the investors, the shippers, and the railways. The railways could have introduced the element of steadiness. The importance of the shippers' interests and the advantage of low rates were so exaggerated that they were made neither steady nor low, to the disadvantage not only of the investors, but of the railways themselves. How this was done will now be shown.

Between 1867 and 1870 an agitation which is known as the Granger movement arose in the West as a result of the state of things above described. The farmer vote in the elections was pitted against the corporate vote. The former was triumphant because it received the support of those towns which were non-competing points and had suffered from discrimination and extortion. In Illinois the movement was very strong. Two successive Legislatures were returned, thoroughly opposed to monopoly and corporate power. A new State constitution was adopted in 1870, making it mandatory upon

<sup>1</sup> Seligman in *Pol. Science Quarterly*, September, 1887, p. 389: "Pooling maintains the advantages of a healthy competition and prevents cut-throat competition." Hadley, 106: "To the business community, regularity and steadiness of rates are more important than mere average cheapness. Business can adjust itself to high rates easier than to fluctuating ones; the railroad competition of necessity makes them fluctuate." Quoted by Blanchard (G. R.), *Forum*, v., 658, August, 1888—"Shall Pooling be Permitted?"

the General Assembly to enact certain laws for the control of railroads. This, it will be observed, was the expedient of democratic tyranny to subvert a fundamental principle of American liberty, namely, that no legislative body can bind its successor. In Illinois they even went so far as to make it the duty of the Legislature to fix schedules of maximum rates. Iowa in 1874, Nebraska and Alabama in 1875, and California in 1879 drew up new constitutions containing somewhat similar provisions, and Commissions were created by statute to see that the laws were enforced. Illinois was, of the Western States, the leader in the commission movement, as it was in the movement for constitutional revision.<sup>1</sup> In accordance with the constitutional mandate the General Assembly, in April, 1871, passed an act creating the Railroad and Warehouse Commission, composed of three members to be appointed by the Governor for the term of two years.<sup>2</sup> It was given power to investigate and to prosecute violations of the statute. The Legislature had thus taken a bold stand, but that it did not comprehend the causal conditions is shown by what followed. In 1873 the fruits of unrestrained investment were gathered in a great national panic. Then it was that Illinois struck deeper into the heart of things. But the mistake had been made in supposing that the shippers were the only persons interested in the roads. Nor was the State yet convinced of her mistake. Instead of allowing the crippled roads to gather their resources, she passed in 1873 a law empowering

<sup>1</sup> Clark, *State Railroad Commissions*, 20.

<sup>2</sup> Clark, 32, 33.

the Commission to make schedules of reasonable maximum rates for each road doing business in the State.<sup>1</sup> What was needed at that time was schedules of maximum rates with adequate provision for their enforcement. The proper step, it was left for the self-interest of the roads to find, with what success we shall consider, under the next reason, when we come to the topic of railway associations. In the meantime the power of the Commission was strengthened so as to enforce its schedule of maxima.<sup>2</sup> A State prosecutor was put at the service of the Commission; the findings of the Commission were at once made *prima facie* evidence, and the burden of proof that a rate was reasonable was placed upon the roads. The action of Illinois was quickly followed by many other States in the South and West until the Commission "with power" became a characteristic feature of Western railway control. To understand what the value of its work was we must inquire both what it was doing and what other forces were doing at the same time. Let us first consider what the railways did for themselves.

The questions that remained to be settled in 1870 were those of discrimination or competition, through rates, and co-operation between different lines. The companies resorted for the settlement of these questions to voluntary associations of railway managers. Their work divided itself into two parts; first, the care of joint traffic; second, the regulation of competitive traffic. The first was similar to that done

<sup>1</sup> Walker, 17.

<sup>2</sup> Clark, 34, 35.

by the Railway Clearing-House in England. The principal subjects of negotiation were joint rates, classification of freight, apportionment of earnings, and inspection. The second part of the work was that done by the monthly rate conferences of the English managers.<sup>1</sup> Its purpose was to maintain rates, to assist in maintaining lines already constructed in competitive existence. It was pooling, or, as Senator Platt defined it, "an agreement between competing lines to apportion the competitive business; that and nothing more."<sup>2</sup> In 1890 the leading associations of this sort were the following: The Trunk Line Association, embracing the great railroads which operate between the Atlantic seaboard and the cities of Buffalo, Pittsburgh, and Wheeling; the Central Traffic Association, including most of the roads in the territory west of the Trunk Lines as far as Chicago and St. Louis; the Interstate Commerce Railway Association, with its affiliated organizations, called the Western Freight Association, the Western States Passenger Association, and the Trans-Missouri Freight and Passenger Association, covering the region between Chicago and St. Louis on the one hand and the Rocky Mountains on the other; the Southern Interstate Association, working in the Southwest beyond the Mississippi; the Trans-Continental Association, embracing traffic to and from the Pacific coast; and in addition to a number of associations covering smaller sections of the country, the Southern Passenger Association and

<sup>1</sup> Walker, *Railway Associations*, 12-19.

<sup>2</sup> Quoted by Blanchard, *Forum*, v., 655, August, 1888.

the Southern Railway and Steamship Association, having their field in the Southern States east of the Mississippi River.<sup>1</sup> The above list, it is seen, covered very nearly the whole country. The absence from the list of special associations for New England may be explained when we consider the work of a second non-restricting force for good, namely, the Massachusetts Commission. For the present we may consider, as typical of the railway association and as illustrating by its experience in a sparsely settled country the history and efficiency of all the associations, the last of the list, namely, the Southern Railway and Steamship Association. Upon this excellent type we are fortunate in having an excellent monograph.<sup>2</sup>

After a series of preliminary meetings, beginning in 1873, the final agreement constituting the Southern Railway and Steamship Association was perfected in 1875; and on October 13th of that year Mr. Albert Fink, General Superintendent of the Louisville and Nashville road, was elected General Commissioner. The Commissioner had general charge of the business of the Association. Important matters were referred to a convention or to managers of the roads interested. The decisions and orders of the General Commissioner, recommendations, statistics, together with the minutes of the conventions and committee meetings, were communicated to the various roads by means of

<sup>1</sup> Walker, 6.

<sup>2</sup> "The Southern Railway and Steamship Association," Henry Hudson, *Q. J. E.*, vol. x., 115, October, 1890.

circular letter. In 1883 an Executive Committee was appointed, consisting of the manager, or executive officer, of each of the principal lines of the Association. The Executive Committee was given jurisdiction over all matters relating to the joint traffic, but could act only by unanimous consent. Of its sub-committees the most important was the Rate Committee, having charge, in the first instance at least, of rates and classifications. The Rate Committee could only act by unanimous consent, and any member could demand that a question be referred to the Executive Committee. By the first agreement, the Commissioner was to serve as arbitrator, but some years later an Arbitrator was elected as a permanent officer of the Association. His duty was to receive written arguments and to decide all cases referred to him. In 1883 the number of Arbitrators was increased to three, the present number.<sup>1</sup>

At the outset the pool covered only business with the Eastern cities. In 1886 it was extended to business with the West, which had been suffering from rate wars, much to the dissatisfaction of the public. In the first few years it was hard to collect balances. In June, 1877, a convention of the roads agreed to a deposit of twenty per cent. In his annual report for 1887 the Commissioner was able to say that since 1877 all balances had been paid and rates thoroughly maintained, except for about a month, from February 14 to March 15, 1878, during which time there was a war of rates between

<sup>1</sup> Henry Hudson, 71-4.

the roads. Nor was the service of the roads to the public less valuable than that to the railways and the investors.<sup>1</sup> In 1887 the General Commissioner reported to the convention that there had been literally no complaint of discrimination between individuals in the same locality, and very little between localities, and that, moreover, unreasonable. Not only did the roads prevent rate wars and avoid discrimination, they also developed the traffic of the country.<sup>2</sup> Roads which had a genuine utility, but not strength enough to survive a crisis, were preserved to carry on their work in peace. The development of traffic has raised these weaker roads to a higher utility, and has, thus, justified their preservation. It has increased enormously. The amount of cotton carried North from all pooled points more than doubled from 1877-78 to 1885-86. In 1877 it was 297,284 bales; in 1885-86 it was 664,337. The amount of merchandise South-bound increased in the same period from 70,000,000 pounds to nearly 150,000,000 pounds.<sup>3</sup> Although such an increase was certainly due in part to other causes, it was just as certainly due to the regularity of rates and the co-operation of the roads. Certainly, that part of the public which had to do directly with the roads in the Association was not dissatisfied with the working of the pool. Yet in the year 1887 the Federal Government, having at last determined upon railway legislation, seized upon pooling as the very thing that it wished to put a stop to. That in so doing it was moved more

<sup>1</sup> Henry Hudson, 75.

<sup>2</sup> *Ibid.*, 93, 94.

<sup>3</sup> *Ibid.*, 93.

by politics than by wise policy will presently be once more demonstrated. For the present, let us consider very briefly the second force that was supplementing the work of the "commission with power," namely, the "advisory commission."

We saw that the Western States found themselves in 1873 opposed in interest and policy to the railways. At that time business was poor and traffic ceased to be remunerative. Stockholders were dissatisfied and shippers were in distress.<sup>1</sup> It was at this time that the Western States spoke with vigor and in no gentle spirit. We can readily understand failure before 1873 to check the building of useless roads by the censorship of a board of commissioners, but, at the same time, we should expect some such action shortly after 1873. We are surprised to find, at a time when securities were being thrown in great numbers upon the market, such legislation as the extension of power given in 1873 to the Illinois Commission and such legislation as Wisconsin's Potter Law.<sup>2</sup> The railways at that time could not stand interference, and the public might well have foreseen that they would resort secretly to what they were forbidden to do openly. "The evidence is strong that railways have not been, at least in England and the United States, on the whole exceptionally profitable."<sup>3</sup> They could certainly not run at a great profit during the latter part of 1873 and the early part of 1874. A community whose

<sup>1</sup> Clark, 19.

<sup>2</sup> Hadley, 134-6.

<sup>3</sup> "A Contribution to the Theory of Railway Rates," F. W. Taussig, *Q. J. E. V.*, 441, July, 1891.

interests were so bound up with the development of the railway system as were those of the West should have shown a greater appreciation of the true situation and the proper remedy. There was even serious doubt as to the constitutionality of the action of these States. The Illinois Law of 1871 providing for State control of rates was promptly declared unconstitutional by Judge Lawrence. He was as promptly rewarded by failure of re-election, and the State avoided the point of his decision by providing in the Law of 1873, not that there should be certain maxima, but that the rates should be reasonable. A Commission was then appointed to fix reasonable rates. The Commission was given such arbitrary power that they succeeded in forcing upon the roads rates that were quite unremunerative.<sup>1</sup> The railroads made vain attempts to test these regulations in the courts. Appeal after appeal was taken, until finally, in 1877, the constitutionality of such a law was put beyond doubt. In that year the Supreme Court, in the famous decision in *Munn vs. Illinois*, sustained their constitutionality and started the trend of judicial opinion in that direction. But the experience of getting this decision was very tedious and costly. Western States began to ask themselves whether it was worth much after all. They began to look with

<sup>1</sup> For a discussion of the Constitutional Question of the Granger Cases see "State Regulation of Prices," Wm. H. Dunbar, *Q. J. E.*, vol. ix., 309 *ff.*, April, 1895; *Munn vs. Illinois*, 94 *U. S.*, 113; Hadley, 42, 130-6. For the Theory and Policy, see T. M. Cooley, "The Theory of Transportation," *Pub. Am. Ec. Ass'n*, ix., 146, 147, May, 1894.

more attention on what was going on in the East. They found much to learn from the experience of Massachusetts.

That experience was, briefly, this: In 1869 the railroads of Massachusetts were in the same disconnected state as those of many other places. The service had not been planned with a view to the needs of the Commonwealth, and nothing was known of the internal workings of the roads. Whatever reports had been made were intentionally worthless. The public wished to understand the railway system, that it might see that its future interests were not prejudiced. In 1869, therefore, a Commission, composed of estimable public men, was appointed to investigate and report. Its only duty was to keep the public informed and to make recommendations both to the roads and the Legislature. Powers it had none, except the force of argument; more than this it repeatedly refused to accept. The great pool of 1877 had been weighed by the Commissioners and met their approval.<sup>1</sup> They explained its advantages to the public. Its stand on discrimination was moderate, leaving something to the discretion of the roads.\* In questions which it was called upon to arbitrate it put the railroads and the public on as nearly an equal footing as possible, and avoided special animus against the railways. It early convinced the roads that upon the whole their interests coincided with those of the public.

<sup>1</sup> *Reports*, 1878, 66; 1881, 36, 37;\* decision in *Clapp Hanover Bridge Co.*, 1881, 42, 214; *Adams*, 219; *Freetown vs. New Bedford*, 1871, 115.

The result was that it was eminently successful in the introduction of economics and the police regulation of the roads.<sup>1</sup> When the Commission had made sure of its work in guiding that part of the railway system which could properly be regulated without Federal co-operation, it began to extend its sphere of influence. It was through this attitude of the Commission that the attention of Illinois and other Western States was called to it when the constitutionality of State control of rates was being debated. The Massachusetts Commission had never exercised the function of establishing rates. It had early guided the construction of roads, so that extravagant competition should not exist. It had countenanced combinations between the roads, and was content to limit its power in the matter of rates to that of impartial arbitrator. And no Commission had been more successful in securing rates at the same time low and steady.<sup>2</sup> Even if the decrease in the rates had been less pronounced, this would be more than compensated for by the confidence which the roads gave the Commissioners in view of their policy of non-interference. It added to the permanent value of their functions of regulation and arbitration. Even while awaiting the determination of its authority by the Supreme Court, the Illinois Commission in 1877 put the Massachusetts principle of arbitration into practice.<sup>3</sup> When power

<sup>1</sup> W. A. Crafts, "The Massachusetts Railroad Commission," *Engineering Magazine*, 292, November, 1895. Crafts was for years Secretary of the Commission.

<sup>2</sup> For table of rates, 1871 to 1895, see *Rep.*, 1895. <sup>3</sup> Clark, 37.

was confided to it to fix rates, it voluntarily adopted the Massachusetts principle of arbitration as more efficacious. And so it proved to be. For the year ending June 30, 1880, there were forty-seven formal complaints brought before the Illinois Commission, of which twenty-five were of extortion, thirteen of unjust discrimination, six of both, and three for other reasons.<sup>1</sup> All of these were settled by the Commission.<sup>2</sup> Where the railroads were decided against they promptly responded to the decision of the Commission. The West assumed a new attitude toward the roads. In Kansas, the Commission began to make use of its discretionary power to place a very liberal interpretation on some rather stringent laws.<sup>3</sup> In 1884 the number of cases in Illinois had been reduced to three, each of which concerned the question of unjust discrimination.<sup>4</sup> In 1885 there is no record either of extortion or unjust discrimination.<sup>5</sup> But the peace was short. The bulk of the traffic was interstate. The railways argued the State had no constitutional authority to regulate fares or rates on commerce among the States.<sup>6</sup> Their argument was confirmed in a case decided October 25, 1886. This rendered necessary Federal regulation. Agitation for it was started at once.

<sup>1</sup> E. R. A. Seligman, *Pol. Science Quart.*, vol. iii., 400, September, 1887.

<sup>2</sup> Clark, 37.

<sup>3</sup> See quotation of this tenor from Kansas Con. *Rep.*, 1885, in Walker, 24.

<sup>4</sup> Seligman, *P. S. Q.*, 1887, vol. iii., 400.

<sup>5</sup> Clark, 38.

<sup>6</sup> Wabash, etc., R. R. Co. *vs.* Illinois, 118 *U. S.*, 557.

It was realized in the next year in the Interstate Commerce Act.<sup>1</sup> This brings us back to where we left railway associations working out by themselves the problems of competition, discrimination, and consideration. Our second reason is now substantiated. The punitive and corrective legislation after 1870 was not successful. The roads were themselves working out problems, the advisory commissions were helping them. We shall now see how the action of the government balked them in their endeavors. Then, after an exposition of divers plans for settling these questions, the views of the present writer will be set forward. The third reason will then be made good.

In all the present writer's reading on railway regulation he has never seen it denied that discrimination cannot be avoided in the United States except by agreement between different companies as to rates. This principle is stated by almost every writer on the subject, and is presented fairly and squarely in the first annual reports of the Interstate Commerce Commission. Yet the very act under which this Commission exists prohibits both discrimination and the only means by which it has been effectively restrained.<sup>2</sup> Railway associations, we saw, exercised many other functions than that of regulating pooling. At the time when the Interstate Commerce Law went into effect, April 1, 1887, associations

<sup>1</sup> Act of Feb. 4, 1887, *Statutes at Large*, 49th Cong., 379 *ff.* Amendments 50th Cong., 855 *ff.* "The Interstate Commerce Act," J. R. Dos Passos, in "Questions of the Day."

<sup>2</sup> Quoted in Walker, 11.

did not dissolve. They lost, however, legal sanction for one of their most important purposes. To all appearances, associations really abandoned their pooling agreements.<sup>1</sup> In the case of the Southern Railway and Steamship Association the twenty per cent. deposits were refunded, and a new agreement signed with the provisions for pooling omitted.<sup>2</sup> So far as the Commission had information on the subject, the pooling of freight and railway earnings came to an end when the Act took effect.<sup>3</sup> They probably did for a time. The business of the railways did suffer very much from the sudden change of relations. The old evils of competition appeared. Weak and useless lines attempted to secure profitable business at the expense of strong and useful neighbors.<sup>4</sup> In this attempt they were at a decided but unmerited advantage. Discrimination was inevitable under such circumstances.<sup>5</sup> Here the Act had committed another contradiction in terms; it expected the rates of two roads to be alike, but prohibited any agreement upon the subject. Nor could the greater road find redress in the tribunal provided by the Act. It has often been suggested that the courts should back up the Commission in its quasi-judicial powers; the fact has been, however, that the Commission is not competent. Evasion is easy, the expense is great. Shippers and injured railways prefer to bear the ills they have

<sup>1</sup> Henry Hudson.

<sup>3</sup> *First Report.*

<sup>2</sup> See agreements before and after the Act went into effect, Hudson, 115 *ff.*

<sup>4</sup> Hadley, *Q. J. E.*, iii., 175, January, 1889.

<sup>5</sup> Blanchard, 652 *ff.*

than seek the remedy.<sup>1</sup> The Interstate Commerce Act has, therefore, destroyed, by prohibiting pooling, the means of preventing discrimination which was successful in the past, but has not constructed adequate machinery to replace it. When in 167 *U. S.*, 479 the court said that the Interstate Commerce Commission cannot, by deciding that a rate is or was reasonable, fix a standard of reasonableness for the future, the reason for the existence of the Commission ceased.<sup>2</sup> The probability, moreover, that this machinery can ever be made adequate is very remote. The sort of regulation that this machinery contemplates is close national control.<sup>3</sup> This, in order to be effective, must be exclusive; in other words, the conflicts between Federal and State control at innumerable points must be done away with, an impossibility if railway regulation is to be by governmental power and our government is to retain its Federal nature. The problem of consolidation, in the opinion of the present writer, is to be worked out in the absence of arbitrary government control. That this may be accomplished will be shown after a brief exposition has been given of some other plans.

Meddaugh's plan is this.<sup>4</sup> First, allow pooling

<sup>1</sup> Meddaugh, 102.

<sup>2</sup> *Interstate Commerce Commission vs. C. N. O. & T. R. Railway Co.*, 167 *U. S.*, 479. "This decision," said Harlan, J. (168 *U. S.* 176), "when taken with the course of decisions makes the Commission a useless body."

<sup>3</sup> See Walker, 5.

<sup>4</sup> E. W. Meddaugh, "The Interstate Commerce Act: Suggestions for Improving It." *Pub. Mich. Pol. Science Ass'n*, May, 1893.

agreements; second, take away the Commission's quasi-judicial powers; and third, allow it to prescribe rates which shall be *prima facie* reasonable. This plan must be rejected; for, first, it does not provide against Federal conflict and interstate complications; and, second, to allow a Commission to establish rates *prima facie* reasonable is more tyrannical than the rate-making power of the strongest pool. It comes not from the bargainer, but from government.

J. F. Hudson's plan is to return to the highway theory.<sup>1</sup> He would allow the companies to own nothing but the roadway. Any one could use his own trucks. This, he says, will do away with pooling. The objections to this are: first, that it does not go to the root of the matter; trouble arises not from the monopoly of rolling stock, but from the number of the roads; secondly, pooling may under certain conditions yet work the solution of the railway problem<sup>2</sup>; thirdly, as Hadley says, it is not economical<sup>3</sup>; and fourthly, it is less easy to control than the present system.

Mr. C. P. Huntington's plan is for a consolidation of the roads into a national system under joint ownership by private enterprise.<sup>4</sup> This plan seems to be in the right direction. It is probably what we shall come to after a long time. One important

<sup>1</sup> *Railways and the Republic.*

<sup>2</sup> G. H. Lewis, *National Consolidation*, 106-110.

<sup>3</sup> Quoted in Lewis, 110.

<sup>4</sup> *A Plea for Railway Consolidation*, by Collis P. Huntington, President Southern Pacific.

stage must, however, intervene. Joint ownership of all the railways is not only too remote to be practicable; it has dangers, and is, furthermore, unnecessary. All of the advantages can be attained by joint management, with pooling agreements, under proper regulation. As has been well said, unless railway managers can associate, railway owners must combine. The corollary is that when railway managers can associate they need not combine. Many of the evils of great national consolidation of wealth may thus be avoided.<sup>1</sup>

If we reject this plan for national consolidation, how much sooner shall we reject a proposal for national consolidation under public ownership! This is the proposal of Mr. George H. Lewis in his recent book.<sup>2</sup> The roads are to be public, appointments are to be made by the government, and the whole system to be called the Consolidated Railway Company of the United States. This proposal is met very aptly by one writer with a quotation from the preamble of the Constitution which specifies as the purpose of our government "to secure the blessings of liberty for ourselves and our posterity"; it is clinched by the same writer by a description of the distribution of patronage to over 500,000 government employes.<sup>3</sup> Hadley has also anticipated this proposal by a discussion of two of the great problems with which railway companies have had to

<sup>1</sup> Walker, 23.

<sup>2</sup> George Henry Lewis, *The National Consolidation of the Railways of the United States*, xii., 199-228.

<sup>3</sup> James F. Wilson, *Forum*, v., 469, June, 1888.

struggle, namely, rates and employes.<sup>1</sup> The government of the United States can make better use of its own energy and the attention of the people than to assume difficulties so obviously belonging to private enterprise.

One proposal, finally, is worthy of our attention, not because it has any value, but because it suggests the true policy for our governments.<sup>2</sup> It is built up out of an analogy between the railways and the banks. The writer says that our banks were once in a chaotic condition; that at the present time they are regulated with great efficiency by a national department, the Treasury. From this he concludes that the same regulation should be extended over the railway system. He is led, however, to extremes by his proposal. Not only should there be a national commission, but it should have power to fix rates. Going back to the national bank analogy, we may ask him, "Does the Treasury Department fix the rate of discount?" When this writer delivers himself of the following

"The existing condition of things is unworthy of us as a nation. It should not, it cannot, go on forever. Why not then meet the question now? Are we not great enough and big enough to do what is right and best for the country's good, even though in so doing we may make a new departure, and go back on the time-worn theories as to the rights of the States and the functions of our national government?"

<sup>1</sup> Hadley, *Forum*, v., 429, June, 1888.

<sup>2</sup> Frederick Taylor in *Forum*, vol. v., May, 1888, 299; *Ibid.*, 309; Taylor, 319.

we cannot follow him, and feel only the more convinced that no good can come to American government either by radical measures or unnecessary complications in relation to the railways.

Believing, then, that the railway question in the United States will work itself slowly to the satisfaction of all, the present writer rejects all the above proposals, and sets forth as his own a plan by which this will be brought about with the greatest amount of assistance from the State and National governments, and with the least violations of those principles of American government and industry which we would at any cost preserve. This proposal divides itself into three co-ordinate parts: first, that pooling be permitted; second, that the quasi-judicial power of the Interstate Commission be taken away; and, third, that a system of State Commissions be developed on the plan of the Massachusetts Commission, to work in active co-operation with an Interstate Commerce Commission organized upon the same basis.<sup>1</sup> That this should be the method of regulation in the United States will be shown by three reasons. The first is that pooling will settle many questions to the advantage of the three parties interested, namely, the railways, the investors, and the public. The second is that pooling cannot be prevented, and that the judicial power of the Interstate Commerce Commission is useless. The third is that the Massachusetts system, besides achieving more in railway regulation in the interest

<sup>1</sup> Attempts at such regulation have been made under present conditions, and have accomplished much.

of the public, has not only allowed the railway question to work itself out, but has done no violence to the fundamental principles of American trade. This last point will be substantiated by a review of the experience of the Massachusetts Commission. For this exposition a new chapter will be needed.

## CHAPTER IX

### THE MASSACHUSETTS COMMISSION AS A GUIDE TO AMERICAN RAILWAY CONTROL

THE merits of the plan proposed in the last chapter and the reasons for its adoption will be brought out in a description of the work of the Massachusetts Commission. They will not, therefore, be taken up in their logical order.

The appointment of a permanent Commission in Massachusetts in 1869 to relieve the Legislature of some of its work in looking after the railways of the Commonwealth first brought the commission system into prominence. Yet the idea had existed in America as early as 1844. New Hampshire in that year established a board to inspect the roads and to make a report to the Legislature. This was the first Commission in this country. The example was in time taken up by other States. Temporary boards of arbitration were established in New York in 1850. Connecticut created the same sort of Commission in 1853, Vermont in 1855, Maine in 1858, Ohio in 1867.<sup>1</sup> In Massachusetts a general railway law provided that every corporation should at all times submit its books to any committee whom the Legislature might choose to appoint for that particular purpose.<sup>2</sup> Acts

<sup>1</sup> Clark, 23.

<sup>2</sup> *Ibid.*, 26, 27.

were passed providing for a temporary commission whose duty it should be to determine in co-operation with Commissioners from another State what amount of the profits pertained to the portion of the road lying within each State. Such temporary commissions were unsuccessful. The railroads would not co-operate with them, and deliberately turned in reports that were worthless. The common impression that all was smooth sailing for the Commission in Massachusetts is false. The proposal of a permanent Commission met with vigorous opposition from the roads.<sup>1</sup> When, in 1869, the Commission was established in spite of the protests of the roads, its position was an extremely delicate one. In order to do the best service to the State and the roads it was necessary that its policy should be tentative, yet firm and persistent. It was important that this should be appreciated by the members of the first commissions appointed in accordance with the act.

They were to be there in number, appointed by the Governor, the choice resting strictly upon their qualifications. The theory of the advocates of the law was that one member should be a lawyer, another a merchant, and the third an engineer. This was not embodied in the law, but was practically carried out in the first appointments. Mr. James C. Converse, President of the Boston Board of Trade, was appointed as a merchant, and made chairman. Mr. Charles Francis Adams was chosen

<sup>1</sup> W. A. Crafts, "The Massachusetts Railroad Commission," *Engineering Magazine*, No. 5, 1895, 286. Mr. Crafts was at the outset and still is Secretary to the Massachusetts Commission.

as a lawyer. He succeeded to the chairmanship three years later, but was the leader from the first. Mr. Adams practically formulated the policy of the Commission, marked out its work, wrote its reports and decisions.<sup>1</sup>

The functions usually given to commissions in the early seventies were three: police regulation of inspection, arbitration, and fixing the maximum rates. When a commission is given all three functions, it is for the purpose of classification called the "regulative commission," or the "commission with power." In this class were the Western Commissions. We have already reviewed the work of the Illinois Commission as a type of this class. When a commission has only the functions of the inspection and arbitration, it is called a "supervisory commission" or an "advisory commission." Of this class the Massachusetts Commission is the type. Some commissions have the powers of a court of law, or quasi-judicial functions. Such is the Interstate Commerce Commission.<sup>2</sup>

The Massachusetts Commission repeatedly declared that it would accept no powers other than those of inspection and arbitration. The function of fixing rates it disavowed as not a fit subject for it and as inconsistent with its usefulness as arbitrator.<sup>3</sup> Judicial functions were better left to the machinery of the common law. It hoped by investigation and discussion to educate the public, the railroad managers, and the Legislature, and so to

<sup>1</sup> Crafts, 288.    <sup>2</sup> Dixon, *State Railroad Control*; Clark, 25.

<sup>3</sup> Crafts, 292.

substitute for the snap-judgment of the average legislator, the impulses of popular agitation, and the animosity of wounded railway owners, the carefully studied opinion of experts, enlightened opinion on the part of the public, and confidence in the judgment of the Legislature and the Commission on the part of the railways.<sup>1</sup> Thus, while in the West the fundamental idea behind every railroad act was force, the Commission representing the constable, in Massachusetts the fundamental idea was publicity, the Commission representing public opinion.<sup>2</sup>

That this policy was wise no one now doubts. It is the custom, however, to attribute its success to the *personnel* of the Commission, to the general tone of legislation in the Commonwealth, and to the general situation in which the roads found themselves. It is true that there was no dominant road in the State, and no great interest suspected of too great power, but there had been parallel roads built, and the railway companies had shown themselves for years very irritable in the matter of interference, and strong in opposing it. When it is said that in 1873 the roads had been arranged so as to avoid much competition, it should be remembered that this was the work of the policy in question. That it prepared the way for its own success is a merit of the policy, not an argument against it.

When the tone of general legislation in Massachusetts is referred to in order to diminish the merit of this policy, it should be remembered that the first

<sup>1</sup> Crafts, 288.

<sup>2</sup> *The Railroad Problem*, Chas. Francis Adams, 138.

members of the Massachusetts Commission had some very unwise legislation to counteract, and that it is an essential part of this policy to raise the tone of legislation. When we remember this, the fact that it was itself a good piece of legislation, and a product of Massachusetts, should not blind us to its intrinsic merits. When it is said that the same policy could not have succeeded in the West, it should be remembered that the West deliberately adopted some of its methods in preference to the more stringent ones which the Supreme Court confirmed to it. Admitting that the policy of the Massachusetts Commission could not have succeeded under the conditions which existed in 1870 in the South and West, that furnishes no reason why it cannot succeed when this territory has attained the normal degrees of demographic and economic maturity.<sup>1</sup> But this is something more than the policy of the future; it creates conditions. Its very essence is its adaptability.

This is particularly true of the question of membership. To say that the success of the Massachusetts Commission is due to Mr. Adams is not to give him too much credit, but it is mistaking cause for effect. The Massachusetts system calls forth good men; incapable men cannot exist under it. Imagine an unscrupulous politician accepting a place on the Massachusetts Commission. His only power would be his own ability. If he did not possess any, publicity would soon find him out. In the case of good men, publicity calls out all that there is in them.

<sup>1</sup> Paul-Dubois, 180, 181.

Any man can hold a position when arbitrary power is given him; even if he have ability, he will get along without exerting it unless he has great strength. To say that Charles Francis Adams framed the policy of the Massachusetts Commission and guided its execution does not lessen the adaptability of that policy or its intrinsic merits. It is of its essence to bring capable men to the task in question, then to bring out all the good there is in them. Believing, then, that it would have succeeded in the West, let us see how it succeeded in the East.

The work to which the Commission first gave its attention was of a breadth well calculated to command respect. It struck at the root of the railway evil as it was then showing itself, and directed construction toward the building up of the resources both of the Commonwealth and its railways.

“Roads running to tidewater,” it is said, “are less needed than roads thoroughly equipped and developed running to the doors of our workshops. A substantial revival of our foreign commerce must be looked for, not in a costly forcing process, or in a close competition with more naturally favored localities, but in a more complete development of those industries which we have successfully made our own. Massachusetts is a crowded manufacturing community; its railroads should be adapted to its actual requirements.”<sup>1</sup>

The spirit in which the Commission made this recommendation is shown by their general policy.

<sup>1</sup> *First Report*, 1869, 29.

An illustration of it is found in their action on another far-reaching proposal. In their report of 1870 the Commission recommended the purchase of the Fitchburg road, to be managed by the Commonwealth in competition with all private roads.<sup>1</sup> This was an imitation of the Belgian system, for which Mr. Adams had great admiration.<sup>2</sup> On February 14, 1873, in a speech before the Joint Standing Committee on Railways, he said: "The very essence of the system of State management lies, not in the ownership of all the railroads by the government, but in the control of the whole through the ownership and management of a part."<sup>3</sup> When a few weeks later this plan was very effectively answered by Richard S. Spofford the proposal was withdrawn.<sup>4</sup> It was characteristic of the Commission to put its views in a fair light, but not to insist on anything but a fair consideration. When this had been given they were satisfied, and left it for the Legislature to decide uninfluenced. In this lay their strength.

There were two other policies which the Commission inaugurated at the outset which gave it a firm hold on the respect both of the roads and the public. The first was that of reducing fares and freight rates so as to produce traffic.<sup>5</sup> This was taken up rapidly, and not only conferred a great benefit on the public but swelled the profits of the roads. The second was the compilation of the laws of the

<sup>1</sup> *Rep.*, 1870, 64.

<sup>2</sup> Adams on Belgian System.

<sup>3</sup> *Speeches*, C. F. Adams, Harv. Lib., vii., 440, 18.

<sup>4</sup> Harv. Lib., vi., 32, 34.

<sup>5</sup> *Rep.*, 1869, 41.

Commonwealth on railways. These were scattered through 950 special acts. Bringing these together, the Commission made it more easy for the public to assert its rights. It was now easy to find out which roads possessed charter rights, and what they were. This aided greatly in reducing the barefaced blackmail speculation which had existed, and conferred a great benefit on the legitimate railway enterprise.<sup>1</sup> Such recommendations as these, and the abolition of the payment of money fares on the trains, afforded so much protection to the roads that they were ready to see some good in the regulations to which the Commission was about to ask their assistance. This was in the simplification of railway statistics.

Previous to 1870, and for some time after, the accounting of American railways had been confused and non-committal. They had been submitted to the Secretary of State, an officer so overworked that he had no time to give to them. The Commission had the law changed to make reports returnable to the Commissioners.<sup>2</sup> They summarized them and sent them to the Secretary of State. The first reports submitted were not only defective but utterly worthless for comparison of one road with another and for computation of general results and averages. To reform the book-keeping of old railroad officials was not easy. They had to be persuaded of the unfairness of comparing results shown by different systems, but uniformity was soon secured.<sup>3</sup> As soon as a good standard was reached throughout the Commonwealth, they made efforts to have it adopted

<sup>1</sup> Crafts, 290.

<sup>2</sup> *Rep.*, 1869, 45, 64.

<sup>3</sup> *Rep.*, 1870, 8.

throughout the country.<sup>1</sup> At the Convention of Railway Commissions, at Saratoga, in 1879, they succeeded in getting a uniform return adopted.<sup>2</sup> Thus the Massachusetts system of accounting has been held up as a model by expert accountants and made its influence felt in all the other States. Their work has been of inestimable value, not only to the public and to students of railway questions, but to the railroads themselves.<sup>3</sup>

Yet the results attained by adherence to wise policies of wide scope have not been greater than those reached by attention to technical details. The Act of 1869 had said:

“Sec. 7. The Commissioners shall have the general supervision of all railways and railroads, and shall examine the same, and keep themselves informed as to their condition and the manner of their operation, with reference to security and accommodation of the public and the compliance of the several corporations with the provisions of their charters and the laws of the Commonwealth.”<sup>4</sup>

In accordance with this Act it was the custom of the Commissioners to go over every mile of railroad in the Commonwealth for the purpose of inspection at least once a year. This was done in a special car, in company with the bridge engineer, the inspector of the Commission, and the superintendent and

<sup>1</sup> *Rep.*, 1878, 25.

<sup>2</sup> *Ibid.*, 87.

<sup>3</sup> *Railway Expenditures, Their Object and Economy*, Marshall Kirkman, i., 54, 55, 249; ii., 43-46, 341.

<sup>4</sup> Laws relating to the Commission, Appendix of Adams, 218.

master of construction and repair of the railroad. Stops were made at each station, bridge, and other desired points, with a view to ascertaining the condition of construction and equipment. In 1894 part of this work was given to three inspectors, appointed to give their whole time to the detailed examination of the machinery, cars, and locomotives, and to the investigation of accidents. This inspection has already proved very useful, and has done much toward hastening the introduction of power brakes, automatic couplers, and similar safeguards against accident.<sup>1</sup>

Similar to this was the experience of the Commission in the introduction of improvements and economies. The following are some of the economies that had been secured up to the present day: the automatic block system, continuous or train brakes, tools in passenger cars for use in emergencies, the abolition of common stoves and heating of passenger cars by steam from the locomotive, heating of street railway cars by electricity, interlocking signals and switches at grade crossings and terminals, and the gradual abolition of grade crossings.<sup>2</sup> Nor did their work stop at the borders of the Commonwealth. Owing to the interchange of rolling stock in through traffic many improvements could not be brought about by the efforts of any single State. The subject was brought before the convention of railroad commissioners by the Massachusetts Commission. Through its efforts, seconded by the Commissions of other States, many Legislatures

<sup>1</sup> Statistics in *Report*, 1895, 37-45.

<sup>2</sup> Crafts, 289.

adopted resolutions requesting Congress to take action on that subject. Thus in 1893 a Federal law was passed requiring that after certain dates all freight cars used in interstate commerce should be equipped with automatic couplers, that all trains should have automatic brakes operated from the locomotive, that all locomotives should have power-driving wheel brakes, and that each freight car should have grab-irons for the safety of employees.<sup>1</sup> The policy of the Commission has not been to force the railways to provide facilities, but to decide in case of complaint whether accommodations should be furnished. The result has been that railroad managers have acknowledged themselves fairly dealt with, and the communities have been satisfied. This system of bringing experience to bear on the introduction of improved facilities and economies has been employed by the Commission as not only the safer way but in the long run as the better and more effective way of reducing rates.<sup>2</sup> Under its influence, in concurrence with the natural laws of trade, rates have gone down steadily. The reduction has been great on the through lines connecting with the West; local rates have also gone down, though not in so pronounced a degree. The following tables show the reduction in rates on all Massachusetts roads from 1871 to 1895.

<sup>1</sup> Crafts, 292.

<sup>2</sup> *Rep.*, 1895, 37-45.

*Average Passenger Fares per Mile.*

1871-1895.

YEARS.	FARES.	YEARS.	FARES.
1871.....	2.51	1884.....	1.92
1872.....	2.43	1885.....	1.88
1873.....	2.32	1886.....	1.88
1874.....	2.30	1887.....	1.85
1875.....	2.30	1888.....	1.90
1876.....	2.23	1889.....	1.87
1877.....	2.22	1890.....	1.82
1878.....	2.18	1891.....	1.83
1879.....	2.11	1892.....	1.83
1880.....	2.05	1893.....	1.83
1881.....	2.02	1894.....	1.80
1882.....	2.00	1895.....	1.78
1883.....	2.00		

*Average Freight Rates per Ton Mile.*

1871-1895.

YEARS.	RATE.	YEARS.	RATE.
1871.....	3.11	1884.....	1.64
1872.....	2.81	1885.....	1.59
1873.....	2.75	1886.....	1.64
1874.....	2.64	1887.....	1.62
1875.....	2.45	1888.....	1.50
1876.....	2.17	1889.....	1.55
1877.....	2.07	1890.....	1.45
1878.....	1.92	1891.....	1.42
1879.....	1.91	1892.....	1.36
1880.....	1.82	1893.....	1.39
1881.....	1.71	1894.....	1.33
1882.....	1.71	1895.....	1.28
1883.....	1.72		

Having now almost completed its gigantic task of bringing about the abolition of grade crossings, the Commission is at present engaged in the development of the railroad express traffic and the introduction of electricity as a motive power on the roads of the Commonwealth. This shows how alert the Commission has been to the needs and interests of the public.<sup>1</sup> The following account of its activity in a more dignified sphere will show not only that they did not find it necessary to violate any of the rights of the railways, but that they found it possible to aid the public the more efficiently by guarding the interests of the railways.

The Act of 1869 provided that upon the complaint and application of the mayor and aldermen of any city, or the selectman of any town in which any part of a railroad complained of was located, it should be the duty of the Commission to make an examination of the conditions. If upon examination it should appear that the complaint was well founded, they should adjudge and inform the corporation of its judgment.<sup>2</sup> The Commission was not given any judicial power. It had the right to make its decisions so manifestly just that it would be acceptable to both parties. More power than this it would not assume. It believed, as the experience of the Interstate Commerce Commission has shown, that more power would be not only useless but a positive stumbling-block.

<sup>1</sup> *Reports*, 1874-96, *passim.*; *Rep.*, 1869, 66; *Rep.*, 1895, 123-140; *Ibid.*, 10-26.

<sup>2</sup> Sec. II. Act of 1869, Adams, Appendix.

On the question of reasonable rates the Commission took a firm stand, at the outset, in the middle ground between the corporation and the public. In 1871 it declared its position as follows:

“When the Board is asked to recommend to a corporation a reduction of its freight tariff in respect to a particular commodity it is necessary for the petitioner to prove at least one of these three propositions :<sup>1</sup>

“a. That the charge by the corporation respondent in regard to the commodity in question is excessive as compared with the charge made by other companies.

“b. That the charge is excessive as compared with the charges of the same corporation for other commodities of like bulk and weight.

“c. That exceptional reasons exist which would allow the corporation to transport the commodity in question with a fair profit at a rate unusually low.”

In all complaints that came before it the Board disclaimed any power to fix rates of fare or of freight.<sup>2</sup> It could only say that it thought a certain rate unreasonable under the circumstances. In the matter of discrimination it left something to the discretion of the roads. This will be seen from the following decisions. The principle that wholesale transactions furnish reasonable ground for lower rates was held not to apply to the case of like

<sup>1</sup> *Freetown vs. New Bedford and Taunton R. R. Co.*, 1871, 115. For a key to the decisions of the Commission see Wigmore's *Digest and Index of Massachusetts Commission*.

<sup>2</sup> *Medford vs. B. & L. R. Co.*, 1884, 149; *Dalton vs. B. & L. R. Co.*, 1885, 128; *Brookline vs. B. & A. R. Co.*, 1885, 134; *Winthrop vs. B., R., B. & L. R. Co.*, 1885, 139.

amounts hauled from time to time, but hauled more frequently for one customer than for another. When the quantity carried at one time is the same, the rate should be the same for all persons.<sup>1</sup> But it is not a discrimination to charge a lower rate for a car load than for a partially loaded car. Further, if special freight rates from one terminus to a given point are made to certain parties on account of large quantities of the commodity carried for the parties, and are open, for the same quantities, to all other parties, the rates do not constitute a violation of the statute; but if the rates are made simply on account of competition at the point in question, and are denied to other parties receiving equal quantities at points nearer to the terminus, the rates are discriminating.<sup>2</sup> Further, the long and short-haul provision of the statute, forbidding a higher charge for a less distance from the same point of departure in the same direction, applies to the carriage of freight taken up outside the Commonwealth and brought within it.<sup>3</sup> It is, further, the duty of the roads to bring raw material into the Commonwealth at a low rate.<sup>4</sup>

We have thus reviewed the application which the Massachusetts Commission made of its plan of regulation. In no State in the Union has there been a more efficient Commission, less friction between the

<sup>1</sup> *Clapp vs. Hanover Bridge R. R. Co.*, 1881, 42, 214.

<sup>2</sup> *In Re Coal Rates in Berkshire Co.*, 1877, 66.

<sup>3</sup> *Stevens's Linen Works vs. N. Y. & N. E.*, 1883, 32; *Anon vs. Housatonic R. R. Co.*, 1886, 38.

<sup>4</sup> *Bel Air M'f'g Co. vs. B. & A. R. Co.*, 1887, 79.

railways and the public, or, on the whole, more satisfactory service by the railroads. If its success can be attributed to any one thing, it is to the fact that the Commission had absolutely no arbitrary power. As has been said by a very keen Frenchman, this system answers better than any other to the qualities of private and individual initiative and of practical broad-mindedness inherent to the American people.<sup>1</sup> He might have added that it is the only system compatible with the federal nature of our government. It has been the failure of some States to recognize this that has made uniform regulation impossible. It was early found that traffic could not be cared for by any one State owing to the divergence in the powers of various States. If all the States had assumed only the powers of the Massachusetts Commission there would have been no conflict. Police regulation is a function properly appertaining to the State. But some States claimed the right to fix the rates. If they had this right over internal traffic, they would certainly concede it to the national government over interstate traffic. As this formed the most important part of railway business, it was assumed that the Federal Government would take the powers of all the States. Massachusetts anticipated this danger, and welcomed a form of regulation more compatible with local government and the liberty of American trade than the absorption of State powers by the national government. This regulation knew no State lines,

<sup>1</sup> Louis Paul-Dubois, *Les Chemins de Fer aux États Unis*, 1896, 180.

its extent was coterminous with its utility; it was pooling. It had not yet been declared unconstitutional, and the Massachusetts Commission gave it sanction and support. Several of the great pools had, during 1878, brought the Commonwealth within the scope of their operations. For the time being all the railroad intercourse between Massachusetts and the interior—east and west—was conducted under an agreement for the division of business between carriers.<sup>1</sup> Although the extent of such operations and the effect of the arrangement certainly gave matter for consideration, the Commissioners, for reasons already set forth, saw no reason for apprehension.<sup>2</sup> They had carefully weighed the great pools, and in 1878 set forth the history of the following: (1) The Omaha Pool, (2) The Southern Railway and Steamship Association, (3) The South-western Rate Association, (4) The Colorado Pool, (5) The Cattle Pool, (6) The Oil Pool, (7) The Westbound Freight Pool, and (8) The Eastbound Freight Compact.<sup>3</sup> The Board expressed the conclusions of its examination as follows:

“Contrary to the general and popular convictions, the Commission has always maintained that, so far from being necessarily against public policy, a properly regulated combination of railroads, for the avowed purpose of controlling competition, might prove a useful public agency. The end is to secure the advantages of competition and to modify or wholly get rid of its abuses, such as waste, discrimination, instability and bankruptcy.”<sup>4</sup>

<sup>1</sup> *Rep.*, 1881, 36, 37.

<sup>2</sup> *Report for 1877*, 65-94.

<sup>3</sup> *Rep.*, 1879, 66.

<sup>4</sup> *Rep.*, 1877, 87.

The trouble was that these combinations were not to be properly regulated. They were before many years declared illegal. As a substitute, there was placed the "commission with power," of which the Massachusetts Commission disapproved.<sup>1</sup> This new arrangement has not been successful. It has balked the railroads in the avowed attempts to control competition, but not in the secret attempts; it has prevented the Massachusetts system from extending its sphere all over the country, and thus settling the question of conflict of jurisdiction. It has given to the central government powers that counteract the real opportunity for Federal control, but which are in themselves useless. The restoration of the conditions existing before 1887, with the perfection of a closely-knit system of State and National Commissions co-operation on the basis of the Massachusetts Commission is the surest means of settling the railway question. That this is so will now be briefly shown.

It is admitted by every one that pooling will settle the question of discrimination. It has done so in the past; the reasons for its success have been shown. The reason why the public does not approve of it is that it fears that it will create great corporate power, infringe the rights of the public by putting the railroads beyond competition, and make it harder to supervise them. These fears are unfounded. Far from leading to the growth of corporate power, pooling agreements will prevent it.

<sup>1</sup> Interstate Commerce Commission. Speech of Chas. F. Adams, 1888, 7.

Unless railway managers can associate, railway owners must combine.<sup>1</sup> The pooling association will act as a breakwater against the so-called railway trust. Consolidation will be worked out by co-operation. The dangerous result of national consolidation as proposed by Lewis and Huntington will be avoided.

The apprehension that pooling will prevent any but the desirable kind of competition is unfounded. Instances of effective competition secured by pooling are many. Pooling only controls competition. The agreement of the Southern Railway and Steamship Association, for example, was renewed yearly, and most of the contracts for division of business were made for a year at a time. Each road tried to carry as much freight as it could, so that, when the next contract came to be made, it might with some show of reason demand a larger share of the business.<sup>2</sup> It is competition of this sort that is advantageous, not that which is done without regard to cost.

Nor is it true that pooling makes it difficult to control the roads; it is the prohibition of pooling that does this. It makes agreements secret which were before public, for pooling cannot be prevented. Hadley believes that no amount of government regulation will prevent it<sup>3</sup>; Meddaugh believes the Interstate Commerce Commission a lame substitute,<sup>4</sup> and Cook believes not only that the Interstate

<sup>1</sup> Walker, 23.

<sup>2</sup> Henry Hudson, 94.

<sup>3</sup> *Railway Transportation*, 1881.

<sup>4</sup> Pub. Mich. *Pol. Science Quart.*, May, 1893.

Commerce Commission Act fails to regulate the railroads, but that any government control will be ineffective.<sup>1</sup> They must be aided by railway managers. These men, as a class, are of a superior type, honest and public-spirited.<sup>2</sup> There are some bad ones, but self-regulation will find them out. They may well be relied upon if only they are subjected to publicity. This will be brought about most effectively under a system of commissions whose sole business it is to keep the railroads on the path of progress, which is unburdened by "powers" and interstate complications of jurisdiction; which stands in the position not of an angry master, but of a candid friend, taking a firm stand in the middle ground between the railways and the public. This will be done by the substitution of the power of arbitration for quasi-judicial powers and the knitting together of the whole system of commissions on the basis, not of arbitrary power but of brains, hard work, justice, and publicity.<sup>3</sup> If this is done, the railway problem may safely be allowed to work itself out. The control of railways by commissions is, as Dr. Adams says, the truly conservative method of control. The Advisory Commission cannot possibly do harm. "If it succeeds, we may look for a solution of all the vexed industrial problems in harmony with the fundamental principles of English liberty. If it fails,<sup>4</sup> there is nothing for civilization but socialism."

<sup>1</sup> Cook, *The Corporation Problem*.

<sup>2</sup> Lewis, Preface.

<sup>3</sup> See J. M. Bonham, *Railway Secrecy and Trust*, i.

<sup>4</sup> *Pub. Mich. Pol. Science Ass'n*, vol. xlili.

## CHAPTER X

### SWITZERLAND AND THE STATE PURCHASE OF RAILWAYS

THE most important factor in the development that is now going on in the commercial world is the annihilation of distance. This is making the world of the individual more broad, and has already secured for him vastly greater opportunities than were before within his reach. Imperfect realization of this by the many, the consequent appropriation of the accruing benefits by the few, and the unsatisfactory conditions always attendant upon great progress, make its full effect less sensible. Even now, a community or a market whose distance seventy years ago was measured by months is within reach in an equal number of days and, for some purposes, in the same number of minutes. Less than half a century ago the earth was encircled by the path of man only in the imagination.<sup>1</sup> Realization of prophecies that have long been in the air now seems near at hand. Forty years ago, Russia had almost no railways. Now the country is being spanned by trunk lines which are intended to form but one system in the network that shall encircle the world. But the building of a great railway system is not such an

<sup>1</sup> *La Russie et les Chemins de Fer Russes*, 12, 16. Paris, 1857.

event now as it was in the days when the Pacific roads were hurried to completion. This is not because the railway problem has shown all its phases, and grown familiar as a question ready for settlement at any time. On the contrary, new considerations present themselves with every new venture, and it is safe to say that the conditions of railway control will no more be stationary in the next generation than they were in the last. The opinion of the present writer is that countries which have already assumed control of railway systems have acted prematurely, and that their experience should be closely examined by States contemplating such assumption. Whether the American system of "unlimited competition," as Lecky inaptly terms it, is "the worst possible,"<sup>1</sup> is not a question which the present can decide. We must wait to see what other systems bring forth. It may be found that America is unconsciously undergoing present sacrifices which will make possible an ultimate satisfactory solution of the railway problem.

Some nations are making these sacrifices deliberately. The most notable example is that of France. A good account of this is given by Richard von Kaufmann, a German writer, who has made the railways and the finance of France the subject of special study. He says that at the time when the French railway system will revert to the state France will possess a completed system second to none in the world, absolutely unburdened by indebtedness. The price which the state is now paying toward

<sup>1</sup> Lecky, *Democracy and Liberty*, vol. ii., 363.

this future benefit is the advances it makes to the roads in guaranties of interest. Von Kaufmann estimates that the necessity for paying these guarantees will cease about the year 1915. From that time on, payment will be in the other direction until about 1950, when the roads escheat, for it is thought that the excess of earnings over current interest and construction accounts will be sufficient, after 1915, to ensure a large annual repayment. The aggregate excess up to 1950 will be more than 1,200,000,000 francs, and will cancel all the accrued indebtedness of French railway property. The government will be able to make reductions in taxes proportional to the net earnings of the railways, or to moderate the price of transportation so that it shall cover merely the cost.<sup>1</sup>

The writer quoted in the foregoing paragraph asserts that the railway policy of his own country is short-sighted and decidedly inferior to that of France. As a matter of fact, the Germans hope to pay off the railway debt in their own way. In order to make the roads earn taxes, France has placed them in the hands of private-venture companies. The rates in Germany, von Kaufmann objects,

<sup>1</sup> Richard von Kaufmann, *Die Eisenbahn politik Frankreichs*, vol. ii., 829. This work of fourteen hundred pages purports to show that the French system as developed by the "Conventions of 1883" was preconceived in the beginnings of the French railway policy and consistently pursued. In Germany the work was vigorously attacked, particularly in official circles. The author's conception is opposed to that of Gustav Cohn, who maintains that circumstances alone guided the policy of the French at every stage of railway development.

must include, in order to make a net profit for the government, the amount the state would receive from private companies in taxes. The German method is to accumulate the current profits, and the plan seems to have worked successfully, judged even by von Kaufmann's standard, for the net profits have been very large. The two nations have the same end in view, and it is too early to say that the method of the one nation is more effective than that of the other. Thus far, they seem to have amounted to substantially the same thing.

In imitation of the policies of France and Germany, a plan was adopted in 1898 by the popular vote of a nation which may be said to represent both countries in miniature. "A dwarf," said a great Swiss, "is no less a man than is a giant."<sup>1</sup> "The tiny Swiss Republic has within the last fifty years made very valuable experiments in the organization of democracy,"<sup>2</sup> and, in view of the federal nature of the government, and the attitude of the people toward public questions, this experience is peculiarly interesting to Americans. A word first as to the conditions peculiar to the country which make the railway problem the affair of the Swiss people.

Owing to the short distances to be traversed in Switzerland, the use to which is put each of the three ways of communication—roads, waterways, and railways—seems characteristic of the nation.

<sup>1</sup> Vattel, *Le Droit des Gens*, 772, liv. iv., ch. vi., § 78. Paris, 1820.

<sup>2</sup> Wuarin, *Pub. Am. Acad. Pol. Sc.*, No. 158.

The first two are important in that they give color to the railway problem, and make plainer the kind of concern which the Swiss citizen feels in its solution.

The most common mode of travel is on foot. Tramping is common to the extent of being a national habit, both as a pastime and as an industry. The valley roads, the mountain roads, and the mountain paths are seldom unfrequented. All ages and both sexes take up the "fussgang" as the ordinary mode of recreation. The nature of the country gives it all the charm of variety that could be desired. This national love of journeying on foot is helpful in work as well as in play. Churchmen tramp from station to station; markets are within walking distance of both buyers and sellers; and workmen, skilled and unskilled, go on foot from one end of the country to the other, from places where work is dull to places where employment is plentiful, and thus equalize the supply and demand of the labor market. The highroad is the local railway of Switzerland.

There are two reasons for this extensive use of the roads in Switzerland; first, they are good; second, there is always good accommodation at the end of a stage in the journey. The inns are satisfactory and cheap, and to the workman in search of employment free accommodation is given at the end of the day, at public expense, and something to start on in the morning. These highways are in part those built in Roman times<sup>1</sup>; built after the conquest of Helvetia,

<sup>1</sup> J. Naehler, *Die Römischer Militärstrassen und Handelswege*, and historical maps therein. Strassburg, 1888.

Germany, and Gaul. Those which cross the Alps, although well constructed, are not more than two and a half to three metres wide. The valley roads from the Lake of Geneva to Lake Constance are much wider. The other wagon roads are modern. The total length of Swiss highways is 16,000 kilometres,<sup>1</sup> and Switzerland may easily be traversed from end to end on foot in ten days.

Thanks to the progress of steam, the abundance of railways, and the facility of transportation by lake and navigable watercourses, the major part of these roads are now of local interest. In 1889 the lake steamers carried about four million passengers. For this service there were about ninety steamers,<sup>2</sup> or about the number often found in the service of a single American company at the present day. The service of the waterways, with the exception of Lake Constance, is entirely internal, and is not of great importance as compared with the railways. A very small part of the commerce of Switzerland extends beyond the continent of Europe.<sup>3</sup>

Notwithstanding the mountainous character of Switzerland, and the increased cost which results from the obstacles which nature presents, the republic possesses a complete network of railways in which almost every type is included. There are main steam trunk lines, narrow-gauge lines, cog-wheel lines, cable mountain lines, and street-car

<sup>1</sup> *Diccionario Enciclopédico Hispano-American*o, tomo xix., 745. Barcelona, 1896.

<sup>2</sup> *Ibid.*

<sup>3</sup> See figures in *Annual Encyclopædia*, 1898, 713.

lines, and many kinds of motive power are represented. There is a total length of 4007 kilometres, or 2489.8 miles.<sup>1</sup> The average cost of construction was 270,000 francs per kilometre, but to this must be added the value of land granted free, the greater part by the communes.<sup>2</sup> The completeness of the system may be expressed in figures. There is one mile of railroad in Switzerland for every ten square miles of territory. More roads are in process of construction, and important additions to the present system have been provided for.

The principal railway lines are five. The names, lengths, and dates of opening are as follows<sup>3</sup>:

NAME.	OPENING OF THE FIRST PART.	LENGTH.
Nord-Est.....	Aug. 9, 1847.	723 km.
Suisse-Centrale.....	Aug. 2, 1875.	328 "
Jura-Simplon .....	May 7, 1855.	928 "
Union-Suisse .....	Oct. 14, 1855.	279 "
Gothard . .....	Dec. 6, 1874.	276 "

From a strategic point of view, the most important line is the Gothard. For transportation the principal lines are the one from the Lake of Geneva to Lake Constance, by way of Zurich and Berne, and those which from Bâle and Schaffhouse make a junction with the Gothard, giving communication between Italy and the North of Europe. The other lines perform subordinate service; that is, they serve regions or localities.<sup>4</sup>

<sup>1</sup> *Consular Report*, May 4, 1899.

<sup>3</sup> *Consular Report*.

<sup>2</sup> *Diccionario*, xix., 745.

<sup>4</sup> *Diccionario*, xix., 745.

These are the five roads the purchase of which by the government has for a long time been an issue upon which parties have divided in Switzerland.<sup>1</sup> Now that the last step has been taken, the question bids fair to create thorough discussion wherever interest in social movements is felt. At the referendum of February 20, 1899, the Swiss people approved this step by the overwhelming majority of 368,634 to 182,718.<sup>2</sup> It remains for the federal authorities to put the purchase law into effect. On February 22, 1898, the Federal Council, the executive head of the Swiss Confederation, assumed the franchise rights of a portion of the lines of the Nord-Est. If the purchase is executed successfully, according to the terms of the several franchises, the federal government in 1903 will have come into possession of the Jura-Simplon, the Suisse-Centrale, the Nord-Est, and the Union-Suisse systems, and by 1909 into the possession of the Gothard. For the purchase of the Gothard, negotiations must be made with Germany and Italy, which countries furnished subsidies for the construction of that line. It is possible, moreover, that the government may come into the possession of the railway system before 1903, if it decides to treat with the companies by effecting special mutual agreements, authorized under the law providing for purchase. In the absence of such agreement, and in event, if purchase

<sup>1</sup> Lowell, *Governments and Political Parties in Continental Europe*, ii., 213, 305.

<sup>2</sup> The figures in *Q. J. E.* for 1898, 255 (384, 146 to 117, 130), appear to be incorrect.

before the time is proposed, of any disagreement with the companies as to purchase valuations, the Federal Court will be appealed to for a determination of the amount of indemnity to be paid to shareholders.

It will be interesting to see what measures the federal government will take in effecting the purchase of the railways, in procuring the necessary funds, and in operating the roads. It will be especially interesting to see whether or not the state will be able to keep the promises which have been made in its name, and to compare private operation under state control with direct operation by the state in a democracy like Switzerland. What these promises were, and the course of events which led to their being made, will now be shown. Information on this matter must be drawn almost entirely from the lucid account of Micheli, whose work was translated from the French by Dr. John Cummings, of Harvard University.<sup>1</sup>

The first railroad in Switzerland—the road from Zurich to Baden, twenty-three kilometres long—was opened August 9, 1847. It was built by a private company. The state soon declared its intention to act. The Federal Assembly voted, September 18, 1849, to request the Federal Council to submit a comprehensive plan for a railway system. Experts were consulted. The Swiss experts were divided in opinion. Some favored construction by companies, under state supervision, with guarantees of interest

<sup>1</sup> Horace Micheli, "State Purchase of Railways in Switzerland," *Econ. Studies Am. Econ. Ass'n*, vol. iii., No. 6, Dec., 1898.

from the state; others, and their opinion was shared by the majority of the Commission of the Council, favored state construction. But, although those who favored state construction were in the majority, and were reinforced in their position by the advice of the English engineers, Stephenson and Swinburne, the Council went to the opposite extreme, excluding all co-operation of the federal government in the construction of railways, not reserving even the right to grant franchises.

This right was given to the cantons by the law of July 28, 1852, but was transferred to the federal government in 1872, by a law which, though supplemented by several special acts, has remained in force up to the present time. It appointed for every franchise a term, at the end of which the road might be assumed by the state. The periods were such that the question of state assumption might come up in 1883, in 1898, in 1903, and 1909.

The occasion of considering the appropriation of an existing railway thus arose May 1, 1883. At that time the companies were not prosperous. The five main roads paid in 1882, on preferred stock, an average dividend of 4.8 per cent.; on common stock, 1.4 per cent. The Nord-Est, which was subject to purchase at that time, paid 6 per cent. on preferred stock and no dividend on common stock.<sup>1</sup> This financial condition had two effects: to deter the state from purchasing the road, and to show the need of closer supervision. A law was passed in

<sup>1</sup> J. Steiger, *Die Eisenbahnverstaatlichung in der Schweiz*, 2d Ed., 25. Zurich, 1898.

1883 calling for regular returns and accountings from the railways.

The government was not satisfied with the action which circumstances thus compelled it to take. Although the same question would not come up again, the purchase of existing railways did not cease to be a subject for debate, and there was evolved a plan for controlling the roads more suited, perhaps, to the modern incorporated company than to a republic. This was called the *système de pénétration*. By purchasing sufficient stock in the companies the state proposed to "insinuate itself" into control of their lines of railway, perhaps into ownership. In 1889 the Suisse-Occidentale and the Jura-Berne-Lucerne consolidated into one company, the Jura-Simplon, which became the most important of the Swiss railway companies, with a length of 1000 kilometres. Upon this road the government tried its *système de pénétration*, and very soon acquired at an advantageous price sufficient stock to control the company. The amount necessary for this purpose was supposed to be far less than a majority, for a general law prohibited any one holder to vote more than one fifth of the shares. This law of course did not operate against the executive department of the government. Encouraged by the apparent success of the plan, the Federal Council entered in 1891 into negotiations with a syndicate of bankers for the purchase of 50,000 shares, representing one half the capital stock of the Suisse-Centrale, at 1000. The railway company immediately offered to sell its entire system at this handsome premium, against

which the dividend of 6.6 per cent. paid in 1890 seemed a small consideration. With admirable consistency the Federal Assembly voted an acceptance. In America the deal would have been rushed through, but what Abraham Lincoln said of the people is much more true in Switzerland than anywhere else. This is by virtue of a weapon given by the Constitution of 1874—the referendum. Nearly 92,000 citizens demanded that the question be submitted to popular vote, and at the election 289,406 voted against purchase, 130,729 in favor thereof. State assumption was, therefore, postponed, and the *système de pénétration*, the failure of which, where the government held less than a majority of the stock, might easily have been foreseen, received a set-back that caused its abandonment for other methods.

These were two. The first was expropriation; the second, purchase according to the terms of the franchises. Expropriation was not accorded much favor, a fact which speaks well for public honesty. For the state to plan and construct a system of railroads is one thing; for the state to seize without full compensation the system planned by individuals, and entered upon at their risk, is quite another, and under certain conditions may deserve the name which Lecky gives it—naked robbery.<sup>2</sup> The other method mentioned above was adopted in 1898. It merits for this reason, if for no other, more attention. There was some doubt as to what the franchise meant. It was construed by some to give the

<sup>1</sup> Steiger, 25.

<sup>2</sup> *Democracy and Liberty*, i., 220.

government the option of purchasing the roads before expiration of the term of concessions or at the expiration. Unless by the expression as to purchase at the expiration of the concession it was meant that the government was obliged to assume the roads at that time, there was no meaning in the expression; for if the government could purchase at any time up to and including the date of expiration, it could certainly purchase at the expiration. It was certain that the government did not bind itself to buy, and it was just as certain that up to the date of the expiration of each road's concession it was free to refuse to sell. And such was the prevailing opinion.

Thus Switzerland had until 1898, when the next concession was to expire, to decide upon a policy. From 1894 onward the government, the railroads, and the people made admirable preparation for the determination of the important question of the purchase of a railroad system by the government, a determination which should not be made hurriedly. When it was found that the *système de pénétration* was not effective, measures were taken with the avowed purpose of making it so, but in the course of events this purpose was lost sight of, and the *système* was modified and applied to state purchase. This will be illustrated in the account which follows.

In 1895 the Federal Council proposed a law which established, as a prerequisite to voting shares of stock in railway companies, six months' registration of the certificates. The object was declared to be the exclusion of foreign influence, but the avowal was merely diplomatic. Foreigners held only in

blocks, and registration was worth while for them. The holdings of individuals in Switzerland were in small numbers. It turned out that the Swiss did not register, but foreigners did. Thus foreign influence was increased by the step.<sup>1</sup>

As a matter of fact, foreign holdings were not large. This is shown by an explanation of the following table:

	IN SWITZER- LAND.	OUTSIDE.	UNREGIS- TERED.
Jura-Simplon .....	147,844	33,226	168,530
Nord-Est.....	31,427	37,100	91,473
Suisse-Centrale.....	14,050	20,414	65,536
Union-Suisse.....	20,818	8,082	51,100
	214,139	98,822	376,639
Gothard.....	1,347	26,347	72,306

The shares of the Gothard should not be counted, since the road was from the beginning almost exclusively an international enterprise.<sup>2</sup> This is shown by its history, which may be briefly told here. The first part of the line was opened December 6, 1874.<sup>3</sup> In June, 1877, an international conference was held in Lucerne to consider the question of continuing work on the St. Gothard Tunnel. The commission fixed the sum required to complete the undertaking at 40,000,000 francs, of which they proposed that Germany should contribute 10,000,000, Italy 10,000,000, Switzerland 8,000,000, and the company 12,000,000 francs.<sup>4</sup> In the latter part of June, 1878,

<sup>1</sup> Micheli.

<sup>2</sup> Steiger.

<sup>3</sup> Consular Report.

<sup>4</sup> Am. Encyc., 1877, 706.

the Federal Council resolved to submit to the Federal Assembly this project for a national subvention to the Gothard Railway of 6,500,000 francs. The remaining 1,500,000 francs would be provided by the Northern and Central Railway Company, and no call would be made on individual cantons. The Assembly met July 29th after adjournment, and took up the question submitted. They ratified it.<sup>1</sup> The project was carried out on the basis proposed. International complications will give this transaction importance when the Swiss Confederation actually purchases the Gothard Railway, but the number of shares in the capital stock of this road held by foreigners has no place in a fair estimate of foreign influence in roads wholly Swiss. We may exclude, therefore, the shares of the Gothard from our calculation. In the case of the other companies, foreign influence is not such, when compared with the total number of shares, as to warrant the new law on registration. This is the opinion of Dr. Steiger. The 376,639 unregistered shares show the effect of the new law on the voting power of shares held by the government. Most of them were probably held in Switzerland.<sup>2</sup> The foreign influence argument does not bear examination.

The real motive and the actual effect of the registration law was to increase the influence of the government. The object was not necessarily to continue the *système de pénétration*, but rather to strengthen the position of the state with a view to the prospective purchase.

<sup>1</sup> *Am. Encyc.*, 1878, 776.

<sup>2</sup> Steiger, 169.

Another step in the same direction was taken by making votes of shareholders and acts of administrative boards subject to revocation by the Federal Council. A part of this device was to give the government representation in these boards.

The decisive move, however, was the imposing upon the roads of the duty of making separate statements for each of their lines, and defining accurately the two spheres of earnings and capital.

The purpose of the requirement mentioned in the foregoing paragraph was not a hidden one. There was proposed, November 11, 1895, a bill fixing the price of purchase of the roads, whenever determined upon, at twenty-five times the average annual net earnings during the ten years immediately preceding notification given by the government of its intention to purchase. Hence the requirement as to accounts, and the precaution against over-estimation of net earnings or under-estimation of the basis upon which earnings were reckoned, namely, invested capital.

The law embodying these provisions was ratified by the people October 4, 1896. It is called *la loi sur la comptabilité des chemins de fer*. The expression is aptly rendered by Dr. Cummings "the auditing law of 1896." The vote upon this law was close, but the way was finally opened thereby to state purchase, and the government had its bargain ready to conclude. The railroads were not prepared for this, but they did make preparation towards appeal. The preparations were abandoned, however, lest resistance to the inevitable make the inevitable worse.

The die was cast. The Federal Council laid before the Federal Assembly, March 25, 1897, a bill providing a plan of purchase and operation by the government which should include the five main lines, leaving to private companies only a few standard-gauge lines of secondary importance. Some narrow-gauge roads and some mountain roads were included in the roads to be left in private hands. Each railroad proposed for purchase was to be taken by the government at the earliest date contemplated in its franchise.

The foregoing paragraph gives the project in a nutshell. Its simplicity is seductive, but the history of the bill shows the expansion of which the discussion of a seemingly simple plan is capable. The course of the project is traced in all its stages in the account of Micheli. For a comprehensive and well-arranged presentation of the argument for and against the bill, reference is made to that work. Mention may also be made of the pamphlets of M. Numa Droz,<sup>1</sup> ex-President of the Swiss Confederation, and of the work of Dr. Steiger cited herein.

The little book of Dr. Steiger is said to have created a veritable sensation in Switzerland. Like Droz, he takes the point of view of the economist. He deprecates the step as an important one, taken rashly and without a proper understanding of the situation. State purchase in Switzerland, he says, is an attempt to imitate French and German railway policies by men who do not understand the essential features of those policies.

<sup>1</sup> *Bibl. du Musée Sociale*, No. E. 8455.

The real conflict in Switzerland is not political, economic, or peculiar to Switzerland. It has been fought out in England, in France, and more recently in Germany. Austria has the struggle yet to make, and America must yet make a final grapple with the problems that arise from an attempt to maintain one government to serve two masters. In Switzerland, as in America and elsewhere, it was not a conflict of argument, but of tendencies. On the one side was the desire for progressive unification, on the other was the purpose to preserve to the cantons the rights given to them under the Constitution of 1874. The people broke down artificial local barriers, and the victory was decisive and complete.<sup>1</sup>

The changes which the law underwent in its course from the Federal Council to the referendum were unimportant. They were in the nature of concessions made to the voters of districts in return for their support. It was the people of the cantons negotiating directly with the central government. To satisfy the districts in the southern part of Switzerland, bordering on Italy, the government engaged to continue the line of the Jura-Simplon Company, and to carry out the work of building the Simplon Tunnel, provided, of course, that the subsidies, to be furnished by the Swiss cantons and municipalities and by the Italian Government, should be transferred to the Swiss Government. To West Switzerland was given a guarantee that a pass

<sup>1</sup> The significant title employed by M. Taillichet, the director of the Bibliothèque Universelle, is "Le peuple Suisse doit-il acheter les chemins de fer."—*Bibl. du Musée Sociale*, No. 8456.

should be made across the Alps of the West. And to St. Gall was given a promise that the Ricken line, for which there had been great demand, should be built without delay. The burdens assumed by virtue of these concessions were not great.

The bearing of all that has been discussed in this chapter upon the main subject of this book is direct and important. A small republic, with a federal government, meeting the railway problem squarely, and bringing out a definitive unequivocal solution, presents an ideal object-lesson. The character of the people, the similarity of their institutions with those of America, and the freedom from complications which the Swiss situation offers—all the conditions, in fact, attendant upon Swiss experience—promise the development of a precedent which may be appealed to, according as the trial turns out well or ill, by American statesmen of the future without fear of contradiction. And even in the present, two lessons are plainly taught. The first is, that in a democracy industry leads abstract principle, and does not follow. The second is, that the great object of desire in railway control is to bring the people as closely into touch with the industry as is consistent with its free development. These will be given point briefly and in order.

When railroad enterprise was first awakened in Switzerland, the central government decided that it was the concern of the cantons that railroads should be built, and to them was left the power and duty of granting franchises. Later it was found that this power and duty properly pertained to the central

government. And still later it was decided that the railroads belonged not to districts but to the people of the districts, and that the best representative of all the people of all the districts in matters of transportation was the most extensive and most powerful government in the land. It is safe to say that the essential character of the Swiss system of government has already been changed vitally in an important sphere, and that it will be changed further until the government adapts itself to the needs of industry. The application of this lesson to the United States is neither new nor hazardous.

And the reasoning ventured above is given force by a consideration of the second lesson. It is illustrated by an account of the modification made in the plan for railway control under the new system. The final scheme is as follows: Control is divided between five bodies: the Federal Assembly, the Federal Council, an Administrative Council composed of fifty-five members, five Local Boards of Directors, one for each of the five railway divisions of the country, and District Councils, one for each district, composed of from fifteen to twenty members. The method of election to the three new bodies is as follows. The members of the Administrative Council are chosen, twenty-five by the cantons, twenty-five by the central government, five by the new Boards of Directors. These boards are determined by existing conditions, for there is one for each of the five divisions—Bâle, Berne, Lucerne, St. Gall, and Zurich—and each city is the headquarters of one of the great railway companies.

The members of the Local Councils are appointed, four by the Federal Council, the rest by the cantons comprised in the districts respectively. This organization, which, though apparently favorable to the cantons as such, is in reality highly centralized after the manner of the German system. There is a constituted body lacking in the system which we should expect to find after the vigorous attempts of Swiss democracy to get into close touch with railway matters. There should have been provided, one would say, to complete the democratic system, a railway council to consist of one member for every fifty thousand inhabitants, to be named by the cantons, and to serve three years, making a membership of about sixty, with power to debate and to suggest. Such a body was provided for in the original bill, and the thought was that the people would not be afraid of centralization of government if their representation was direct and their interests could be asserted. The plan for the council was based upon the idea of the advisory commission, and its opinions were in no way binding upon the agencies of administration. Its purpose was to bring the people nearer to the government and to give publicity. But this was superfluous, for the people are already in sufficiently close touch, and so long as the government does not err, the people will not interfere with railway management by the authorities. In case of need, they have an advisory commission at their command, for the Railway Commission in Switzerland is the referendum.

Whatever the economic effect of the purchase of

the roads, the people have not committed the roads irrevocably to the government, and they certainly have not forced railway management to secrecy and falsification. The control which does control lies with an interested, well-informed public, and this Switzerland has not sacrificed.

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